SIXTEENTH ANNUAL REPORT OF THE OMBUDSMAN

FOR THE PERIOD OF

JANUARY 1, 1982 TO DECEMBER 31, 1982

PROVINCE OF ALBERTA

SYMBOL OF THE ALBERTA OMBUDSMAN

". . . he can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds."

The Honourable
Chief Justice J.V.H. Milvain
Supreme Court of Alberta
January 6th, 1970

Ombudsman/Alberta

March 1, 1983

The Honourable
The Speaker of the Legislative Assembly
325 Legislature Building
EDMONTON, Alberta

Dear Mr. Speaker:

In accordance with the provisions of section 27(1) of The Ombudsman Act, it is my duty and privilege to submit to you, and through you, to the Legislative Assembly, the 16th annual report of the Office of the Ombudsman for Alberta.

This past year saw a substantial increase in the work performed by this office on behalf of the citizens of our province. Throughout, I had enviable co-operation from Members of the Legislative Assembly and from senior officials of the government.

I regret to note that 1982 also saw the death of Dr. George Brinton McClellan, the first Ombudsman for Alberta. Many Members of the Assembly, past and present, counted Dr. McClellan as a true and valued friend and, of course, his work on behalf of the citizens of Alberta, as a member and Commissioner of the Royal Canadian Mounted Police, and as Ombudsman, has left a tremendous legacy. He will be sorely missed.

As always, Mr. Speaker, I stand ready to provide you and the Members of the Legislative Assembly with any more information they may require about the workings of the Office of the Ombudsman.

Yours very truly,

RANDALL E. IVANY
Ombudsman

1630 Phipps-McKinnon Building, 10020-101 A Avenue, Edmonton, Alberta T5J 3G2 ☎ (403) 427-2756

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THIS SIXTEENTH ANNUAL REPORT OF

THE OMBUDSMAN FOR ALBERTA

IS DEDICATED TO THE MEMORY OF

GEORGE BRINTON McCLELLAN
1908 - 1982

THE FIRST OMBUDSMAN IN ALBERTA AND IN CANADA

"His was a strong personality, lacing integrity and considerable ability with a sense of humour and profound common-sense and knowledge of the world . . . His example greatly helped the establishment of the institution of ombudsmen throughout Canada."

Sir Guy Powles
former Chief Ombudsman for New Zealand

"Dr. McClellan was an outstanding citizen whose dedication to public service will be highly missed. He did a superb job as Ombudsman for the people of Alberta and Canada."

The Honourable Peter Lougheed
Premier of Alberta

"George will be missed by all who knew him as he was truly an exemplar of a compassionate human being and an Ombudsman."

Herman Doi
Ombudsman for Hawaii

". . . A man whose contribution to the ideal of justice and equity in Canada has been enormous."

Dr. Yves Labonte
Protecteur du Citoyen, Quebec

"His wise counsel was of immense value to me in the establishment of this office. I can concur wholeheartedly that Dr. McClellan's contribution as Canada's first Ombudsman was of inestimable value to all Canadian Ombudsmen who followed."

Ambrose Peddle
Ombudsman for Newfoundland

DR. GEORGE B. McCLELLAN - ALBERTA'S FIRST OMBUDSMAN

To have known George McClellan was to know a man who was full of life. He enjoyed life — his work, his family, his friends.

After a lengthy service in the Royal Canadian Mounted Police, where he rose quickly through the ranks to become the Commissioner, Dr. McClellan came back to Alberta to become Ombudsman. Still the pioneer, he began his new work enthusiastically and effectively. For seven years he paved a clear path, set up a model organization, and did his work well in the service of the Legislature, and the people of Alberta.

When he retired as Ombudsman, he had only a short rest before being called once again to head up the Rent Regulations Appeal Board.

Never in his several careers did George McClellan say no to a summons to serve his fellow citizens.

A Churchillian figure, strong and steadfast, formidable and secure, he delighted to tell stories, and above all he loved to be with his wife, children and grandchildren.

He moved amongst many of the great, and near-great, throughout the world. Yet, above all else his humanity shone through.

Another outstanding facet of his character was his love of his country, and especially Alberta. He served both well because he loved deeply. "Patriotism" is an unfashionable word. George McClellan's kind of patriotism was shown by his deep love and abiding faith in a country he cherished. Because he loved his nation so well, he dared to criticize and speak out against all that marred and stained it. He was born to be Ombudsman.

We thank God for George McClellan, for his happy family life, for his busy public life, for the service he gave, for the life he lived, for the man he was!

RANDALL E. IVANY
Ombudsman for Alberta

OMBUDSMEN - THE BEGINNING

Just 16 years ago, this Province of Alberta set in motion the legislation to establish the Office of Ombudsman. This is not very long when one considers that the genesis of the Ombudsman concept was found in Sweden in 1713 — 270 years ago — when a Chancellor of Justice was appointed by the King to oversee his officials and thus protect citizens from injustice.

It was in 1809 — 174 years ago — that in Sweden, a "justitie ombudsman" was appointed as an officer of the legislature and given the responsibility of ensuring that the laws were adhered to by the administrative authorities and by the courts. In 1919, Finland developed an Ombudsman institution when the country became a Republic.

Denmark did not follow until 1954 and then Norway and New Zealand appointed Ombudsmen in 1962.

Since 1967, nearly 100 classical Ombudsman offices have been established on the federal, provincial, state and municipal levels. In Canada alone there are nine provincial Ombudsmen, along with three specialist Ombudsmen on the federal level. Regrettably, there has been little enthusiasm shown in Canada for a federal Ombudsman, although with each passing year, the need is shown in alarming statistics.

In 1976, Alberta was proud to host the First International Ombudsman Conference bringing together in excess of 40 Ombudsmen from many parts of the world. In May, 1977 the plans for the International Ombudsman Institute were formulated, and in 1978 the Institute became a reality at the University of Alberta, Faculty of Law. The Ombudsman and staff of the Alberta office have been heavily involved with the Institute work on behalf of world Ombudsmen ever since. The Alberta Law Foundation, the Province of Alberta, and the Province of Ontario have given the Institute much of its funding in the years since. The Institute now produces considerable research, many publications, and each year receives, in Edmonton, many people from around the world who are interested in Ombudsmanship. The Board of Directors of the Institute represents every region of the world.

Certainly there is no argument that the Government of Alberta, and the legislators of the Province, have supported the Ombudsman institution, not only in this province, but worldwide. It is a record of which Albertans can be proud.

THE PRESENT AND THE FUTURE

When legislation was first introduced to bring the Ombudsman office to this province, there were certain expectations by the visionary men and women who supported and drafted the Act. It is difficult, even after 16 years, to know whether all of those expectations have been fulfilled. Most certainly, one of the hopes was that the Ombudsman's office would not become another bureaucracy. Although some may feel differently, I am convinced it has **not** become a bureaucracy. In terms of size alone, the number of staff has not increased beyond 18 in the last seven years. There is every opportunity for citizens to meet with the Ombudsman, and there has been continual personal contact with the people of Alberta by the Ombudsman and his staff in all parts of the province through tours, speaking engagements, media interviews and in many other ways.

In 1983 — 16 years after the establishment of the office — there are some areas which ought to be reviewed. Over time, I have advocated the expansion of jurisdiction of the office to incorporate municipalities, nursing homes, and even psychiatric wards of general hospitals. I have indicated my concern at the possible removal of the two mental hospitals from the Ombudsman's jurisdiction, and was pleased to note the assurances given in the Legislative Assembly, and to me personally, that this step would not be taken until the Ombudsman was satisfied there were sufficient safeguards in place for patients in these hospitals.

I have indicated my concerns in these areas, not because I want to enlarge the office, or expand for the sake of expanding, but because of many letters and telephone calls of complaints which come to this office year after year.

I give full credit to the Social Care Facilities Review Committee and the Health Care Facilities Review Committee. Certainly we have referred complaints to these Committees and they have acted on them. In one case this year, the Ombudsman investigated the investigation of one of these Committees.

Since Alberta was in the forefront in the Western world in introducing the Ombudsman institution, the Legislative Assembly might now wish to consider taking new initiatives in the 1980s to make the Ombudsman institution readily available to **all** citizens who have, or may have, legitimate complaints to register.

In 1976, the Legislative Assembly appointed a committee to review the Ombudsman Act. Now, seven years later, in a fast-changing society, there is a good case to be made for a further review of the Ombudsman Act. This review, I suggest, can be accomplished by the Select Committee on Legislative Offices, which includes the Ombudsman's office.

THE SELECT STANDING COMMITTEE ON LEGISLATIVE OFFICES

The Ombudsman appreciates the role of the Select Standing Committee on Legislative Offices. The relationship established between the former Committee, its Chairman, Mr. Bill Mack, former MLA for Edmonton-Belmont, and the Ombudsman, proved to be supportive and largely satisfying. It was extremely helpful to have three members of the Select Standing Committee attend the Second International Ombudsman Conference in Jerusalem, Israel, in 1980.

To reinforce this relationship it is my hope that the Select Standing Committee on Legislative Offices will become even more involved by providing feedback on such matters as the Ombudsman's Special and Annual Reports. Certainly one does not expect members of the Select Committee to involve themselves with the day-to-day operation of the Ombudsman's office, but a closer relationship overall would be beneficial. The annual budget of the Ombudsman's office is already reviewed by the Select Committee, and presented to the Legislature by the Chairman.

THE OMBUDSMAN AND GOVERNMENT

During 1982, the Ombudsman again had the opportunity to meet with senior officials of various government departments to discuss matters of a general nature, rather than to deal only with specific cases being investigated by this office. Although such meetings have usually involved only one or two senior officials, the Ombudsman was pleased to accept an invitation in late 1982 to meet with all the regional directors of the Department of Consumer and Corporate Affairs.

These meetings have always proved fruitful and beneficial to the Ombudsman, in that they provide an opportunity for him to hear of the general concerns of senior government officials and to discuss the relationship which exists between a government department or agency and the Office of the Ombudsman.

Indeed, during the meeting with the Department of Consumer and Corporate Affairs, several suggestions were received as to means of improving the relationship between the Department and the Ombudsman's office, and to provide an even higher level of service to citizens who may have complaints that, while not falling within the jurisdiction of the Ombudsman, can be handled by the Department staff. Several of these suggestions were adopted and have worked well during the latter months of 1982.

Ombudsmen throughout the world have encouraged government departments and agencies to make greater use of the Office of the Ombudsman to discern trends and potential problem areas. The informal meetings which have been held between Alberta's Ombudsmen and senior government officials have gone far to meet those needs and will, I hope, continue and be expanded to include other departments in the coming year.

THE OMBUDSMAN'S REPORTS

The past year has seen the issuance of three special reports, and a fourth was released in early 1983. In July, as a result of a Ministerial Order requesting an investigation, the Alberta Hospital, Edmonton Report was issued. In September, there was a report on the death of a 14-year-old permanent ward of the Crown, and a report on the investigation of a complaint against the Social Care Facilities Review Committee. The report resulting from an investigation dealing with a youth who committed suicide at Alberta Hospital, Ponoka, was released in late February, 1983.

Some issues may arise during the year which can only be properly addressed by a Special Report, because of the urgency, and need to act quickly, as in the case of the Alberta Hospital, Edmonton. It is necessary to take extra time and care to deal with recommendations between Annual Reports. Experience has taught me that constant consultation with the Minister and Deputy Minister of the department concerned can facilitate much of the work we are attempting to do. Certainly, by and large, I have found that those who work in the various departments of government dealing daily with the public, are as anxious as the Ombudsman is to set matters right and assist in any reasonable way. By such consultation and co-operation, the department and the Ombudsman are not put in a win/lose situation, but rather become a mechanism, the chief beneficiary of which is the citizen both are seeking to assist.

There is little doubt in my mind that the Special Report causes some concern to the administration. It is true that it usually attracts some attention in the media because, in most cases, the subject matter was a public issue before it came to my attention. In comparison to the Annual Report it is usually something of a 'hot potato'. If it is critical of the government department, it is newsworthy; if it supports the government department, as, indeed, it sometimes does, the media could not care less. Hardly fair, but a truism.

The right and duty to issue reports has been given the Ombudsman in legislation. From my international contacts I believe that few Ombudsmen in the world are impressed by the Annual Report. During the 1976 International Ombudsman Conference, Mr. Justice Carl Clement stated:

> ". . . normally your work comes to light only once a year upon the delivery of your report to the legislators. Few outside the House have the opportunity of reading it, and others learn of only so much of it as they may chance to read or hear through the media. Contrast this to the Courts whose business can only be done in public."

Mr. Per-Erik Nilsson, the Chief Parliamentary Ombudsman for Sweden commented on this subject and, in his paper to the 1980 Jerusalem Conference, quoted these words ascribed to an Asian colleague:

> "We, the writers of this Report, are becoming skeptical about writing, but we do it because we are duty bound to produce a Report once each year. Our skepticism is not a product of our arrogance or disdain, but it has grown out of our faithfully producing reports which nobody seems to read or care about implementing the recommendations we make to the powers that are."

While I cannot but be pleased with the government response to my recommendations, these are usually all acted upon before the Annual Report goes to press. I am doubtful, therefore, about the value of the Annual Report I produce each year. I would like to discuss with the Select Standing Committee some alternatives to the kind of Annual Report that is now produced. I believe time and money could be better spent by doing things differently. If alternatives cannot be found or agreed upon, consideration should be given to what might be done to make the Annual Report more widely usable and of greater value to the legislators and the general public.

The Special Reports, few though they be, accomplish a great deal. Special Reports spread information quickly, usually because of the consultation with the Department officials. The recommendations can be commented upon immediately, and the public is given knowledgeable insight into the Ombudsman's work in a specific area. Press releases can be made, and press conferences held upon the release of the report, which assists all concerned.

Another matter must also be given consideration. If, as I believe it will, the work load continues to increase in an office which has, static number of staff members, I do not feel I can continue to prepare the detailed Annual Report that has been the custom over the past 16 years. Future Annual Reports, therefore, of necessity, will be condensed, because priority must be given to investigative work, and constant follow-up of recommendations.

THE OMBUDSMAN'S STAFF

On May 1st, 1983, I shall be entering my tenth year as Ombudsman for Alberta. It has been an interesting decade, and overall, one which has seen much fulfillment in this office. It is an appropriate time to pay tribute to my steadfast and diligent staff. Some have joined the office during my time, and a few have been here since the late sixties. No one could have asked for a more supportive and loyal group, and I am most grateful to them all. The public is well served by them and they can be proud of their endeavours.

THE OMBUDSMAN'S WORK

After a modest decline in complaints received in 1979 and in 1980, there have been substantial increases in 1981 and 1982. This past year reflects both an increase in

complaints received and an increase in investigations conducted. Additionally we have completed four special investigations which have taken a great deal of time and investigative skill.

During the last few years there is no doubt in my mind that the complaints we receive are more complicated and demand more investigative work. This is both challenging and rewarding.

BUREAUCRACY

A word about bureaucracy. Bureaucracy, by definition, simply means, government by bureaus; also, the group of officials so governing. Due to excessive publicity, the word has become demeaning, even suspect. A pall has been cast over the work of officials who are, by and large, trying their best to serve the citizens and fulfill their job requirements. Not all, or even most, bureaucrats are bad, or wrong. Most are diligent and helpful in their work.

In any criticism, one must recognize that the importance and influence of bureaucracies are likely to keep increasing. The complexity of modern life makes a growing army of experts necessary. Most ordinary mortals do not, and cannot be expected to understand the maze of technical and economic data. Therefore, experts are necessary, and trust in their skill and ability must be given.

In a time when trust and hope is at a low ebb, there emerges a deep source of alienation. Some of this discontent, and suspicion, is due to the fact that expertise inevitably brings about power to those who possess it.

A Dean of the California Graduate School of Public Policy wrote in an article in U.S. News and World Report (16 August, 1976) that: "Government is increasingly getting a skewed distribution of problems that are insoluble precisely because people demand of government what government cannot do."

Jens-J. Wilhelmsen, in his book, "Man and Structures", published in 1977, comments: "When systems as different as those of the United States and the Soviet Union both complain about the same affliction, it indicates that structural anomalies are not the whole problem."

Bureaucrats create less fear when one knows them and recognizes that most are decent, honest, human beings. Most citizens, however, do not know them, and their fear is of the unknown. The Chinese effort to cure bureaucracy seems, on the surface, to be promising. They are determined to do something about basic activities, exhorting people to serve the nation rather than self-interest.

I do not believe that revolution and continued confrontation provides many answers. Indeed, often it creates more problems than it solves. It may be we shall have to learn, both in the bureaucracy, and in the public, to put aside security, comfort and peace, and find the will to risk change, and try new ideas, before we begin to see the results we desire.

The Ombudsman's office in this, and every other province in Canada, and those throughout the world, are set up to meet the needs of the ordinary individual - people who, because there is an Ombudsman, no longer have to speak only as individuals, and on their own. It should be recognized that the Ombudsman in considering their complaints will in every way try to be objective, unbiased, and fair. I think the record

of this office over 16 years is clear. When the complaint is well-founded, recourse is sought. When, however, a civil servant is unfairly criticized, or a complaint is made against the bureaucracy that is not well-founded, that is unjust, that is unfair, I will not hesitate to make that known.

I am always pleased to report on the favourable co-operation the Ombudsman's office and staff receive from government departments and officials. During the past year the degree of ready response has been particularly noticeable. There is no doubt that consciousness is growing within the public service, and indeed, I believe there is increased appreciation of the work the Ombudsman is trying to do. Consumer and Corporate Affairs, the Solicitor General's Department, Social Services and Community Health, Workers' Compensation Board, and Alberta Government Telephones are departments where I have had many areas of complaints, and where in most cases I have been extremely pleased with the quick, concise and helpful responses. Such attention to my inquiries and investigations is most appreciated. Additionally, I can say again that the Premier, The Honourable Peter Lougheed, and the Attorney General, The Honourable Neil Crawford, have both made themselves available to me on very short notice to deal with specific and urgent matters. This has been extremely helpful.

Hopefully the time will come when government officials and the Ombudsman can work closely together not only to respond to, but to anticipate some of the difficulties that may arise from new regulations and which might lead to complaints to the Ombudsman.

OMBUDSMEN IN CANADA

I have been gratified this year by the publication of Mr. Ulf Lundvik's book, "The Ombudsmen in the Provinces of Canada". He has done an excellent job in describing the various offices in Canada, and I recommend this book to all who are interested in the Ombudsman's work. It was published by the International Ombudsman Institute and is available from that office at the University of Alberta.

To commemorate the Twentieth Anniversary of the New Zealand Ombudsman, Victoria University of Wellington Law Review has produced an excellent volume with articles by those who have been, and are associated with that office. Sir Guy Powles, the former Chief Ombudsman for New Zealand, very kindly, at the conclusion of his contribution, paid a fine tribute to Dr. George McClellan, Alberta's first Ombudsman.

During 1982, several changes have taken place in Canadian Ombudsman offices. Mr. George Maltby of Manitoba, and Dr. Harry Smith both reached retirement age of 65. Both have served their Province, and the Ombudsman community, with distinction and much ability. They will be missed. Dr. Luce Patenaude, the Protecteur du Citoyen in Quebec, returned to her professorship at Laval University. Dr. Patenaude was a fine Ombudsman and worked tirelessly to serve the citizens of Quebec. She will be missed by all her Ombudsman colleagues.

The new Ombudsman in Manitoba is Mr. Gordon Earle, the former Assistant to Dr. Smith in Nova Scotia. His record in Nova Scotia is an excellent one.

Mr. William Campbell succeeded Dr. Harry Smith in Nova Scotia. Mr. Campbell was formerly a member of the Legislature.

In Quebec, Mr. Yves Labonte has become the new Protecteur du Citoyen. He has had a distinguished legal career, and I look forward to working with him as a colleague.

STAFF OF THE OFFICE OF THE OMBUDSMAN

The Ombudsman
Randall Ivany

Ann Ball - Secretary

Executive Assistant
Robert Wyatt

Assistants to the Ombudsman

Legal
Alex Weir
Lorraine Howard (Calgary Office)

Donna Jones - Secretary

Administration
Joe Pennett

Investigations
Diann Bowes
Ed Chetner
Jack Ratcliff
John Reid
Floyd Taylor
Ralph Toews (Manager - Calgary Office)

Support Staff
Inge Donnelly (Calgary Office)
Bonnie Kapty
Anna Moline (Calgary Office)
Beth Staden

BUDGETARY REVIEW

	MANPOWER COSTS	OPERATING COSTS	TOTAL BUDGET
1967/68	24,740.00	2,200.00	26,940.00
1968/69	55,980.00	12,975.00	68,955.00
1969/70	69,220.00	14,550.00	83,770.00
1970/71	107,598.00	20,450.00	128,048.00
1971/72	111,814.00	17,050.00	128,864.00
1972/73	127,339.00	20,000.00	147,339.00
1973/74	157,573.00	35,160.00	192,733.00
1974/75	191,529.00	36,500.00	228,029.00
1975/76	250,710.00	34,104.00	284,814.00
1976/77	276,640.00	41,100.00	367,890.00*
1977/78	335,449.00	54,316.00	389,765.00
1978/79	361,330.00	72,350.00	433,680.00
1979/80	386,033.00	78,040.00	464,073.00
1980/81	430,187.00	99,463.00	529,650.00
1981/82	544,623.00	132,195.00	676,818.00

*Includes $50,150.00 Special Warrant for the First International Ombudsman Conference.

Leased accommodation for office space provided by the Department of Public Works, Supply and Services.

THE ALBERTA OMBUDSMAN'S OFFICE
ANNUAL REPORTS AND SPECIAL REPORTS

DR. G.B. McCLELLAN (1967-1974)

1st Annual Report (September 1st - December 31st, 1967)
2nd Annual Report (January 1st - December 31st, 1968)
3rd Annual Report (January 1st - October 31st, 1969)

1st Special Report (January 30th, 1970)
Dealing with Court Application to Determine Ombudsman's jurisdiction.

2nd Special Report (1970)
Request for Direction from the Legislative Assembly whether to submit or withhold a Report dealing with the complaint of R. J. Philipzyk.

3rd Special Report (1971)
A Supplement with Appendices, Correspondence, etc. on the above complaint of Mr. R. J. Philipzyk.

4th Annual Report (November 1st, 1969 - October 31st, 1970)
5th Annual Report (November 1st, 1970 - October 31st, 1971)
6th Annual Report (November 1st, 1971 - October 31st, 1972)
7th Annual Report (November 1st, 1972 - October 31st, 1973)

DR. R. E. IVANY (1974-)

8th Annual Report (November 1st, 1973 - October 31st, 1974)
9th Annual Report (November 1st, 1974 - October 31st, 1975)

1st Submission of the Ombudsman to the Select Committee, The Ombudsman Act, Alberta (August 16th, 1976)

Report of the Proceedings
First International Ombudsman Conference, Edmonton, Alberta
(September 6th - 10th, 1976)

10th Annual Report (November 1st, 1975 - December 31st, 1976)

4th Special Report (May 30th, 1976)
An Inquiry into the Circumstances Surrounding the Riot at the Fort Saskatchewan Correctional Institution.

5th Special Report (December 13th, 1976)
The Ombudsman's Own Motion Investigation dealing with the Calgary Remand and Detention Centre.

11th Annual Report (January 1st - December 31st, 1977)

6th Special Report (August 1st, 1978)
Re Suicide at the Fort Saskatchewan Correctional Institution.

7th Special Report (December 1st, 1978)
Re Incidents at the Calgary Remand and Detention Centre

12th Annual Report (January 1st - December 31st, 1978)

8th Special Report (January 1979)
Re Allegations of Racial Discrimination Contained in a Report of the Metis Association of Alberta. (A Ministerial Order to the Ombudsman from the Minister of Social Services and Community Health.)

9th Special Report (June 18th, 1979)
Re the Removal of Files from Metis Settlements

10th Special Report (November 27th, 1979)
Re The Westfield Diagnostic & Treatment Centre

13th Annual Report (January 1st - December 31st, 1979)

11th Special Report (March 26th, 1980)
Re Allegations Concerning the Excessive Use of Force by Correctional Officers at the Edmonton Remand Centre. (A Ministerial Order to the Ombudsman from the Solicitor General).

14th Annual Report (January 1st - December 31st, 1980)

12th Special Report (March 1981)
Re The Foster Care Programme of the Department of Social Services and Community Health.

15th Annual Report (January 1st - December 31st, 1981)

13th Special Report (August 1982)
Re Allegations of Patient Abuse at Alberta Hospital, Edmonton. (A Ministerial Order to the Ombudsman from the Minister of Social Services and Community Health.)

14th Special Report (August 1982)
Re Death of Reginald McKinnon

15th Special Report (September 1982)
Re Investigation of a Complaint against the Social Care Facilities Review Committee.

16th Annual Report (January 1st - December 31st, 1982)

OPERATIONAL STATISTICS

The following represents a statistical overview of the work of the Office of the Ombudsman for the past year.

A. Complaints Received

Over the past 12 months, from January 1 to December 31, 1982, a total of 981 written complaints was received — an increase of 17.6 per cent over 1981. Over the same period, 2041 oral complaints were recorded during visits to my office or through telephone inquiries or as a result of interviews conducted.

Oral Complaints

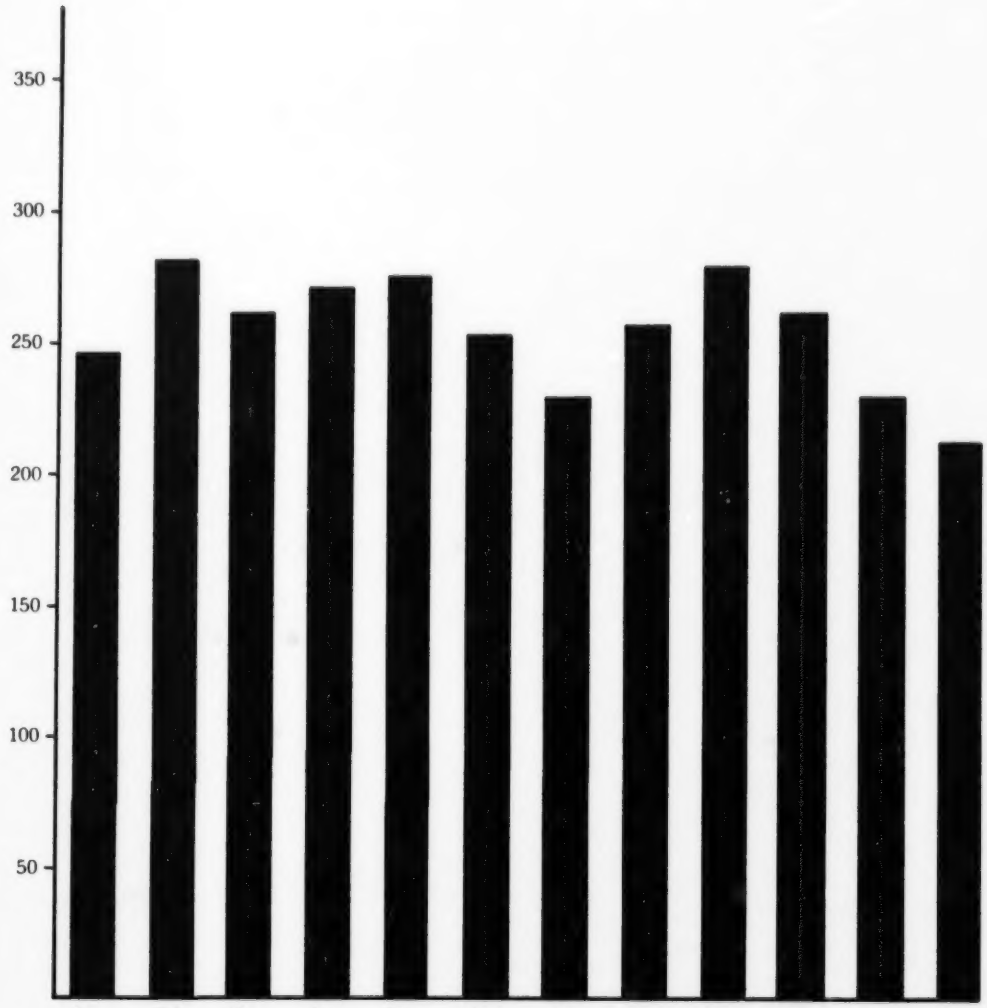
Section 13(1) of the Ombudsman Act requires that complaints to the Ombudsman must be made in writing. Yet, each year, the office receives oral complaints and enquiries on a variety of issues and concerns. Most would not fall within my jurisdiction as Ombudsman, even if they had been submitted in writing. In each case, an effort is made to try to assist the citizen to the best of our ability.

This past year, 2041 oral complaints were made. This marks an increase of 4.8 per cent over the total reported in 1981.

Although no investigations were undertaken on such enquiries, pursuant to Section 13(1) of my Act, where it appeared that a matter fell within my jurisdiction, the complainant was informed of the requirement that complaints be made in writing. Often, written complaints were received. In certain circumstances, where no letters followed, enquiries were made of the complainant in order to be of assistance. As has been the practice of this office, the requirement that complaints be made in writing was not allowed to be a burden to those who, for various reasons, are unable to write their own letters. Positive efforts are made to assist this small number of persons.

Total Complaints Received Per Month

(January 1, 1982 through December 31, 1982)

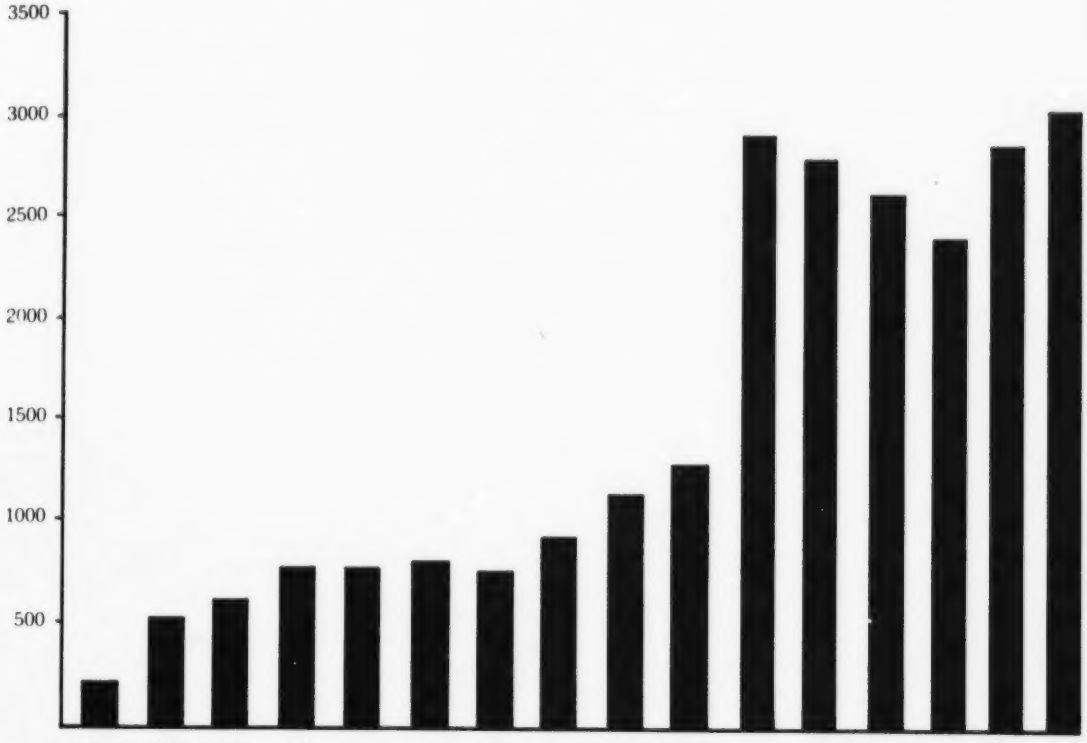


	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Written	76	83	92	94	74	88	85	81	79	89	78	62
Oral	148	195	168	177	202	164	145	174	201	170	148	149
Total	224	278	260	271	276	252	230	255	280	259	226	211

Written Complaints —

Oral Complaints —

Total Complaints Received Per Year
(1967 through 1982)



	1967*	1968	1969*	1970	1971	1972	1973	1974	1975	1976*	1977	1978	1979	1980	1981	1982
Written	216	535	627	791	774	815	776	933	1141	1293	1010	1010	823	783	834	981
Oral	—	—	—	—	—	—	—	—	—	—	1889	1766	1800	1612	1947	2041
Total	216	535	627	791	774	815	776	933	1141	1293	2899	2776	2623	2395	2781	3022

* Note: Reporting years have changed over the history of the office.

1976 — Reporting year covers the 14 month period November 1, 1975 through December 31, 1976

1969 — Reporting year covers the 10 month period January 1, 1969 through October 31, 1969.

1967 — Reporting year covers the 4 month period September 1, 1967 through December 31, 1967

Written Complaints —

Oral Complaints —

Total Complaints Received

Including oral enquiries, 3022 complaints were received in 1982. This represents an increase over 1981, when 2781 complaints were reported. This is the first year in which a total of more than 3,000 complaints was received. In terms of written complaints, the increase totalled 17.6%.

	Written Complaints	Oral Complaints	Total Complaints
Directed against Departments and Agencies of the Alberta Government	732	813	1545
Directed against bodies and organizations beyond the Ombudsman's jurisdiction (including private matters, local authorities, and other governments)	249	1228	1477
TOTALS	981	2041	3022

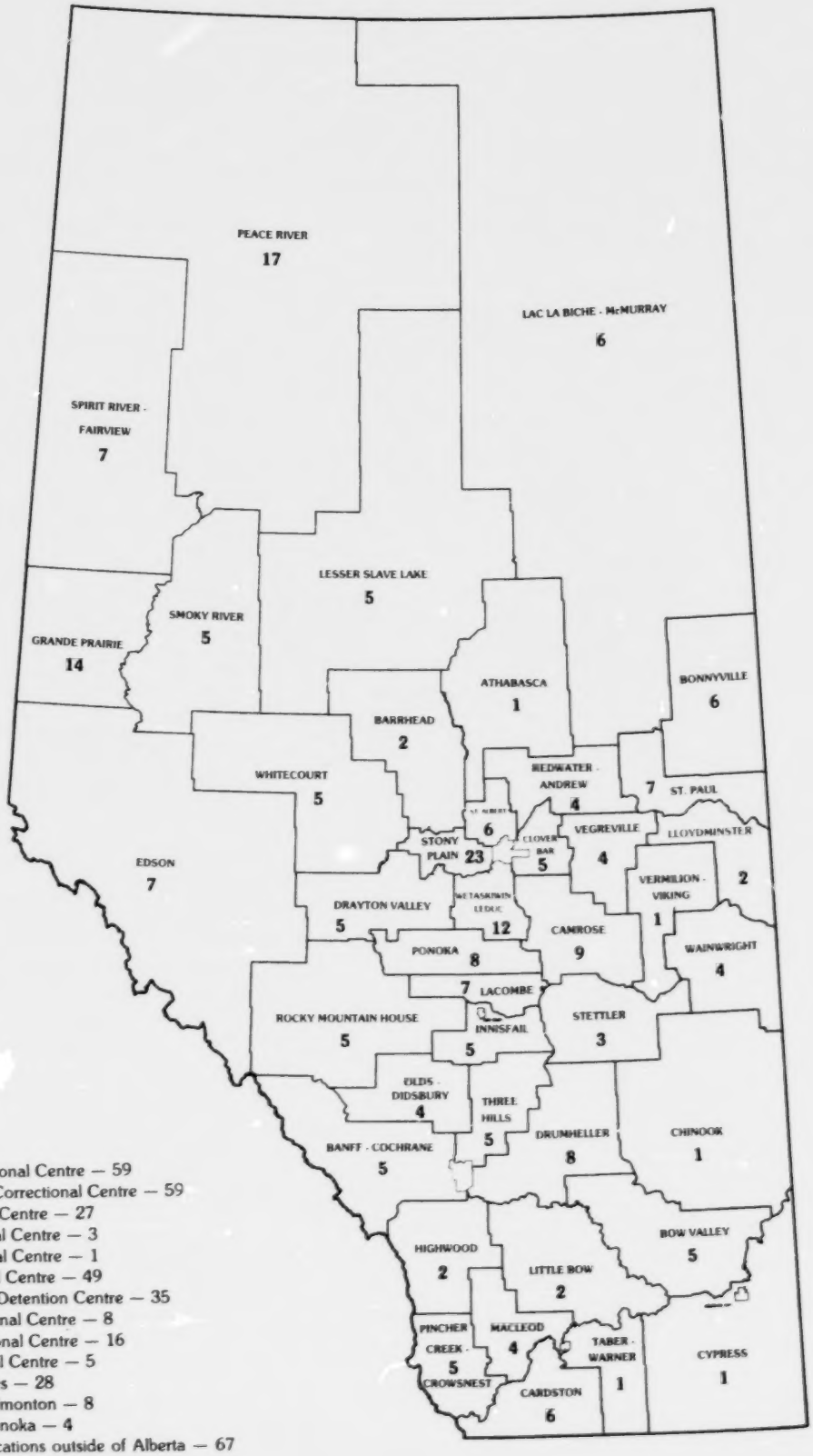
Comparison of Non-Jurisdictional Categories

The accompanying table illustrates a comparison of complaints directed against agencies or authorities beyond the Ombudsman's jurisdiction. It must be noted that not all of the 732 written complaints involving provincial government departments and agencies are ultimately found to be within my jurisdiction and investigated. Many in fact are declined for various reasons.

Year	Municipalities Cities and other local Authorities Written / Oral	Federal and other Governments Written / Oral	Private Matters Written / Oral	Courts of Law Written / Oral	Universities Written / Oral
1967	12	11	33	12	—
1968	30	28	81	33	3
1969	33	24	114	45	3
1970	29	32	151	64	5
1971	24	150	46	4	4
1972	49	35	138	40	4
1973	34	38	118	36	3
1974	56	48	157	44	5
1975	54	72	196	51	7
1976	75	69	181	40	7
1977	46/205	64/263	136/645	38/85	2/7
1978	36/137	62/246	106/624	28/55	2/6
1979	39/142	52/217	93/577	33/79	4/7
1980	30/155	41/179	98/540	25/61	0/5
1981	28/161	48/211	94/652	13/64	2/8
1982	39/134	48/256	121/675	18/81	0/6

Geographical Origin of Complaints

The map accompanying this section notes the place of origin of written complaints received for the year by provincial Electoral Districts. Those from Edmonton, Calgary, Red Deer, Lethbridge, and Medicine Hat are grouped and presented as totals for the urban areas. Complaints from various institutions and from outside of the province are presented separately.



URBAN AREAS

Edmonton — 176
Red Deer — 16
Calgary — 163
Medicine Hat — 8
Lethbridge — 15

INSTITUTIONS

Peace River Correctional Centre — 59
Fort Saskatchewan Correctional Centre — 59
Edmonton Remand Centre — 27
Belmont Correctional Centre — 3
Nordegg Correctional Centre — 1
Calgary Correctional Centre — 49
Calgary Remand & Detention Centre — 35
Bow River Correctional Centre — 8
Lethbridge Correctional Centre — 16
St. Paul Correctional Centre — 5
Federal Penitentiaries — 28
Alberta Hospital, Edmonton — 8
Alberta Hospital, Ponoka — 4
Complaints from locations outside of Alberta — 67

B. Cases Handled

Files carried over from previous years	122	
Written complaints received in the 1982 reporting year	981	
TOTAL: Cases handled		1103
Files concluded without investigation	520	
Files concluded after investigation	491	
TOTAL: Files concluded for all reasons		1011
Files under investigation as of December 31st, 1982		92

There are several reasons why an investigation of a file is not ordered. The complaint may involve a matter which is a policy decision, rather than an act of administration which the Ombudsman is allowed to investigate. Sometimes, the complainant has not utilized available avenues of appeal and, in those cases, the complainant is advised of how to go about launching such an appeal. The door is always left open for a complainant to submit a complaint after all appeals are completed if he or she still feels the victim of an injustice. In addition, a number of complaints involve levels of government or private matters which are outside the Ombudsman's jurisdiction.

A substantial increase in the number of written complaints was noted this year. The 17.6 per cent increase kept the Ombudsman and his staff busy throughout the year. Almost 75 per cent of these written complaints involved matters over which the Ombudsman has jurisdiction. However, for the reasons noted above, not all written complaints are investigated.

The total number of complaints received in 1982 — including both written and oral complaints — was the highest figure ever recorded by the office.

Summary of Dispositions

During the reporting year, January 1 through December 31, 1982, 1011 files were concluded for all reasons. Our closing dispositions were as follows:

		1982 cases
Declined (No Jurisdiction)	No Assistance Possible	291
	Assistance Rendered	4
Declined (Discretionary)	No Assistance Possible	191
	Assistance Rendered	6
Discontinued (No Jurisdiction)	No Assistance Possible	11
Discontinued (Ombudsman)	No Assistance Possible	25
	Assistance Rendered	12
	Rectified	3
Discontinued (Client)	No Assistance Possible	21
Unsupported	No Assistance Possible	274
	Assistance Rendered	25
Partially Justified	No Assistance Possible	14
	Partially Rectified	24
	Rectified	21
Justified	No Assistance Possible	5
	Assistance Rendered	1
	Rectified	83
	TOTAL	1011
Total cases disposed of		1011
Cases under investigation at December 31, 1982		92
	TOTAL	1103

Summary of All Written Complaints Received to December 31, 1982

Total written complaints received	13,342
Total written complaints concluded after investigation	5,323
Total written complaints justified	1,501
Justified complaints as a percentage of complaints concluded after investigation	28.2%

C. Statistical Summary of Files Concluded in This Reporting Year

The charts which follow present numbers of complaints and their dispositions for each of the various branches, divisions, or tribunals within individual departments, and for various agencies. Similar summaries are presented for areas beyond my jurisdiction. In each case, the total number of oral complaints received against departments, agencies or various non-jurisdictional areas is also noted.

Certain files may involve more than one branch within a department, or indeed, more than one department. An effort has been made to designate complaints against the department or agency primarily involved.

The number of cases shown under the heading of "Files concluded in 1982" and under the various dispositions includes cases carried over to 1982 from the previous year.

On November 19, 1982, the Premier, The Honourable Peter Lougheed, announced a government re-organization which resulted in the creation of new departments and the amalgamation of others. The statistics for 1982 were kept on the basis of the departments as they existed for most of the year. Changes to correlate statistics to the new departments were made effective January 1, 1983.

	...al Care	...a Health Care Insurance	Labour	Labour Relations Board	Human Rights Commission	Workers' Health, Safety & Compensation	Workers' Compensation Board	Municipal Affairs
Oral Complaints Received	21	1	6	1	128	6		
Written Complaints Received	13	1	3	1	95	6		
Total	34	2	9	2	223	12		
Files Concluded in 1981	16		3	1	91	7		
Files Carried Forward to 1982		1			11	1		
Declined — No Jurisdiction — N.A.P.	1				2	1		
Declined — No Jurisdiction — Assisted								
Declined — Discretionary — N.A.P.	5		2		31	1		
Declined — Discretionary — Assisted					1			
Discontinued — No Jurisdiction — N.A.P.								
Discontinued (Omb.) — N.A.P.					3	1		
Discontinued (Omb.) — Assisted					3			
Discontinued (Omb.) — Part. Rectified								
Discontinued (Omb.) — Rectified								
Discontinued (Client) — N.A.P.								
Unsupported — N.A.P.	7		1		29	4		
Unsupported — Assisted					5			
Part. Justified — N.A.P.					1			
Part. Justified — Assisted								
Part. Justified — Part. Rectified					4			
Part. Justified — Rectified								
Justified — N.A.P.								
Justified — Assisted					1			
Justified — Part. Rectified								
Justified — Rectified	3			1	11			
Justified — Recommendation Made								

	Advanced Education & Manpower	Agriculture	Agricultural Development Corp.	Hail & Crop Insurance	Attorney General	Public Trustee	Public Utilities Board	Consumer & Corporate Affairs	Securities Commission	Alberta Opportunity Company	Economic Develo	Res
Oral Complaints Received	28	12	2		38	8	1	14	1	4	2	
Written Complaints Received	14	3	4	1	38	6	2	11	2	3	1	2
Total	42	15	6	1	76	14	3	25	3	7	3	2
Files Concluded in 1981	20	6	5	2	45	6	2	11	2	2		1
Files Carried Forward to 1982	2		1		7	2		3		1	1	1
Declined — No Jurisdiction — N.A.P.		1	1		7	1						
Declined — No Jurisdiction — Assisted												
Declined — Discretionary — N.A.P.	5	1			3	1	2	2				
Declined — Discretionary — Assisted												
Discontinued — No Jurisdiction — N.A.P.					4							1
Discontinued (Omb.) — N.A.P.			1	1	5	1						
Discontinued (Omb.) — Assisted								1				
Discontinued (Omb.) — Part. Rectified												
Discontinued (Omb.) — Rectified	1											
Discontinued (Client) — N.A.P.	1				2			1				
Unsupported — N.A.P.	9	4	2	1	15	2		6	2	1		
Unsupported — Assisted					3	1				1		
Part. Justified — N.A.P.	1											
Part. Justified — Assisted												
Part. Justified — Part. Rectified												
Part. Justified — Rectified					1							
Justified — N.A.P.												
Justified — Assisted												
Justified — Part. Rectified												
Justified — Rectified	3		1		5			1				
Justified — Recommendation Made												

nt	Culture & Historic Resources	Education	Teachers' Retirement Fund	Environment	Energy & Natural Resources	Housing & Public Works	Alberta Housing Corporation	Alberta Home Mortgage	Mortgage Interest Relief	Hospitals & Medical Care	Alberta Health Care Insurance	Labour	Labour Relations Board	Human Rights Commission	Workers' Health, Safety & Compensation	Workers' Compensation Board	Municipal Affairs
4	6		8	17	6	6	14	4	3	16	21	1	6	1	128	6	
1	1	2	15	14	7	4	6	2	5	11	13	1	3	1	95	6	
5	7	2	23	31	13	10	20	6	8	27	34	2	9	2	223	12	
1	5	2	18	10	3	4	7	1	6	16	16		3	1	91	7	
			2	6	4	1	1	1				1			11	1	
		1			1	1			2	1	1				2	1	
						1											
	1		1	2					1	1	5		2		31	1	
															1		
								1	2								
															3	1	
									1	2					3		
			1														
1	2	1	11	7	2	2	4			5	7		1		29	4	
							1			1					5		
			2												1		
							1			1					4		
							1										
	1		2												1		
1	1		1	1						5	3			1	11		

	Assessment Appeal Board	Alberta Planning Board	Personnel Administration	Provincial Treasurer	Alta. Gov't Pensions Board	Recreation & Parks	Utilities & Telephones	Alta. Gov't. Telep	S
Oral Complaints Received	2		3	5	1	2	2	37	259
Written Complaints Received	1	2	4	8	1	2	1	21	98
Total	3	2	7	13	2	4	3	58	357
Files Concluded in 1981		2	4	12	2	2	3	17	98
Files Carried Forward to 1982	1					1		4	16
Declined — No Jurisdiction — N.A.P.				1				2	6
Declined — No Jurisdiction — Assisted									
Declined — Discretionary — N.A.P.				3			1	4	34
Declined — Discretionary — Assisted									1
Discontinued — No Jurisdiction — N.A.P.				1					1
Discontinued (Omb.) — N.A.P.					1				6
Discontinued (Omb.) — Assisted									3
Discontinued (Omb.) — Part Rectified									
Discontinued (Omb.) — Rectified									
Discontinued (Client) — N.A.P.				1				1	1
Unsupported — N.A.P.			2	5	1	2	1	7	30
Unsupported — Assisted		2					1	1	6
Part. Justified — N.A.P.									
Part. Justified — Assisted									
Part. Justified — Part. Rectified			1					1	1
Part. Justified — Rectified									1
Justified — N.A.P.									
Justified — Assisted									
Justified — Part. Rectified									
Justified — Rectified			1	1				1	8
Justified — Recommendation Made									

Services & Community Health	Solicitor General	Alberta Liquor Control Board	Correctional Services	Transportation	Government Services	Disaster Services	Executive Council	Energy Resources Conservation Bd.	Officers of the Legislature	Cities & Municipalities	Federal & Other Provinces	Private Matters	Courts of Law	Requests for Assistance	Universities
32	12	79	17	2	1	1			134	256	675	81	76	6	
30	6	259	13	6	1	1	2	1	39	48	121	18	23		
62	18	338	30	8	2	2	2	1	173	304	796	99	99	6	
32	7	262	14	8		1	2	1	39	49	122	18	23		
7		14	3		1		1								
2		7	1	1		1		1	39	48	122	18	21		
										1			2		
5		80	3	2											
		4													
2															
1		4		1											
		2													
		1													
1	1	12													
12	2	82	6	2			2								
		5													
1		9													
	2	11	2												
		17		1											
			1												
		1													
8	2	27	1	1											

CASE COMMENTS

DEPARTMENT OF ADVANCED EDUCATION AND MANPOWER

82-1000-24 **Unsupported - No Assistance Possible**

A former senior instructor at an Alberta Vocational College complained that he was being required to honour the conditions of a return service commitment he had signed when he took educational leave.

The instructor had enrolled in a two-year course, and the Department agreed to pay 75 per cent of his annual salary for the first year of the course. In return, the instructor was required to sign a standard contract promising to return to government service for at least two years following the conclusion of the course.

When the course ended, the complainant learned that his duties had been altered. This, he said, was tantamount to dismissal. After some discussions, the complainant advised the Department that he was going to accept an offer of employment outside of government service. The Department took the position that this constituted a resignation and demanded, therefore, that the complainant repay the money he had received while on educational leave.

My investigation demonstrated that although the complainant's duties were to be changed, his classification and salary level would remain as they were when he began his leave. Originally, the complainant had been responsible for two training programs at the Centre, but the realignment instituted by the Department split these two programs. The Department proposed that he would be responsible for one, and a new manager would be named to head the other program. These changes resulted from an internal review of the Centre's operation, which had been completed before the complainant left for his course. This same review led to the creation of a senior supervisory position which would be responsible for administrative matters of all training programs at the Centre. The complainant admitted that he had considered applying for this position before he left on his study course.

The complainant told me that his program of studies was more oriented towards the training program which was being removed from his responsibilities. The Department, on the other hand, had always understood that the program of studies would be of benefit to either of the two programs. This understanding was based, at least in part, on the complainant's own application for educational leave.

I could not agree that there was any "constructive dismissal" involved in this case. Since the complainant had not complied with his agreement to return to government service, I felt the Department had acted properly in commencing collection procedures. I advised the complainant that I could not support his argument.

DEPARTMENT OF AGRICULTURE

82-1200-11 **Unsupported - No Assistance Possible**

A former employee of a company wholly owned by the provincial government wrote complaining of the amount of separation pay he had been offered when he was dismissed from his position. The offer amounted to the equivalent of six months' salary. The complainant felt that in view of his years of service and his age, he should have received a more generous settlement. He was approaching retirement age and reasoned that he would find it difficult to find any employment to tide him over until he was eligible to collect from the pension plan to which he had been contributing.

During my investigation, I learned that the Alberta government had purchased the company slightly more than two years before my complainant was dismissed. At the time of the change in ownership, he had been given a generous separation allowance by the previous owner.

In effect, then, the complainant had worked with a new employer for two years. I was also satisfied that there were sufficient grounds to justify the man's dismissal from the company. Under the circumstances, I concluded I could not support the complaint.

AGRICULTURAL DEVELOPMENT CORPORATION

82-1202-5 **Unsupported - No Assistance Possible**

A former employee of the Corporation, who had elected to take early retirement because of poor health, wrote complaining that he should be entitled to retroactive benefits under the Long Term Disability Income Continuation (LTDI) Plan. Although he had not been feeling well for some time, the exact nature of the complainant's illness was not diagnosed until some time after his effective retirement date.

Even accepting that the complainant's medical condition had been present while he was still employed by the Corporation, I had to conclude that I could not support his complaint. The rules governing the LTDI Plan require that benefits are not payable unless an illness or disability extends beyond 80 days. Since the complainant had not, prior to his retirement, used all of his sick leave entitlement, he did not qualify for the LTDI benefits.

While expressing sympathy for his plight, I had to tell the complainant that I could not find that the rules established for the Plan were unreasonable.

DEPARTMENT OF THE ATTORNEY GENERAL

82-1400-6 **Unsupported - Assistance Rendered**

An inmate of a federal penitentiary wrote to me saying that he could not obtain a refund of bail money which he had paid.

I contacted the Department of the Attorney General and learned that my complainant's bail money had been returned some considerable time earlier, and that the Department's cheque had been cashed. When I followed up this information with the complainant, I learned that he was not concerned about the bail which he had deposited on his own behalf, but rather with bail which he had paid on behalf of another inmate.

Again, I approached the Department and again, its officials were of great assistance. They told me that the bail documents involved with the other inmate showed that the bail had been paid by the law firm acting on behalf of that inmate. I contacted the law firm and learned that the $750 involved was still sitting in its trust account. It had attempted to locate the complainant but until hearing from me, had been unsuccessful.

The law firm sent me a cheque, payable to the complainant, and I was pleased to forward it to him.

82-1400-34 **Unsupported - No Assistance Possible**

This complaint demonstrates the importance of knowing who you are talking to when you receive some advice.

The complainant wrote to me saying that a warrant for his arrest had wrongfully been issued. He said that he had received a subpoena to appear in court as a witness for the Crown in a case relating to a motor vehicle accident. On the morning he was to appear, he discovered that his car had been vandalized. He said that he telephoned the court office and was told that if he was going to be late, he should not bother to come at all, and that a new trial date would be set. Approximately three weeks later, he received a subpoena showing a new trial date.

The complainant was involved in another accident a short time later and at this time discovered that a warrant had been issued because he had not appeared on the original trial date. He was held in custody until the following morning.

The Department of the Attorney General advised me that all witnesses, on their subpoena, are advised that if they have any problems, they are to call an office which acts as a liaison between the courts and witnesses. No call was ever received by this office, the Department said. The complainant explained that he had not noticed this number, but had simply called the main government telephone number and had been connected to someone, whose identity he did not know.

Since I was unable to substantiate that the telephone call described by the complainant took place, I could not support him in his complaint.

DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS

82-1600-3 **Discontinued 14 (1) (b) - Assistance Rendered**

A businessman who holds a real estate salesman's licence, and who was employed in a town adjacent to a large city, complained that the Superintendent of Insurance had refused to issue him a licence to operate as an insurance adjuster. The complainant said he required both licences to work. The Department's decision had been based on a policy requiring insurance adjusters to work on a full-time basis in large centres. This, according to the complainant, interfered with his right to earn a living.

I did not immediately order a full investigation, because there was an appeal procedure within the Department which was available to the complainant. Prior to that appeal being heard, however, the Superintendent of Insurance reversed his decision on the grounds that the complainant's real estate business was being done in the town in which he resides and in the surrounding countryside, rather than in the large city.

DEPARTMENT OF CULTURE

82-2000-2 **Unsupported - No Assistance Possible**

The complainant in this case was an unsuccessful candidate for a senior position with the Department. He felt that because of his qualifications disclosed in his application for employment, he should have been entitled to an interview. After being told that he was not one of the "short-listed" candidates, he sought information about the qualifications of those persons who had been interviewed for the job.

He complained that the Department's Personnel Branch would only release to him a list of screening criteria used to determine which persons would be interviewed.

My investigation satisfied me that neither of the complaints could be supported. I was convinced that the qualifications listed by the complainant did not meet the screening criteria and he was properly eliminated from the competition. I was also in agreement with the policy adopted by the government that information about candidates for any position is treated in strict confidence, and is not released to anyone.

DEPARTMENT OF EDUCATION

81-2200-17 **Justified - Rectified**

The complainant in this case said he had spent a considerable amount of time attempting, without success, to obtain his teacher's certification from the Department of Education. When I advised the Department that I was commencing an investigation, I was told that the certification had been given in the period between the time the complainant wrote to me and the time I wrote to the Department.

Officials of the Department did provide a number of reasons why there had been an undue delay in dealing with the complainant's request. The Department itself conceded that some of the problems could have been prevented, and assured me that steps would be taken to prevent similar delays in the future.

DEPARTMENT OF ENERGY AND NATURAL RESOURCES

82-2600-17 **Justified - Rectified**

This very interesting case was referred to me by a Member of the Legislative Assembly.

Many years ago, the province had purchased a man's land and, in return, had agreed to give him first opportunity to lease this Crown land. He did so for a number of years. In 1980, the Department of Energy and Natural Resources sent a renewal lease to the man for his signature. Upset at the amount of rent that was being charged, the man wrote to the Department and said that he would not lease the land beyond the end of 1981. The lease was never returned and when the Department followed up on the missing lease, it discovered that the man had died. His widow reiterated the plan to give up the lease at the end of 1981.

The Department then initiated the process to invite applications from others who would be interested in leasing the land. The complainants in this case submitted an application, which was acknowledged. Some time later, the complainants were advised that the land was no longer available. They learned that the land was to be leased to the widow and assigned by her to another person. The complainants felt that this was improper and sought the assistance of their elected representative, who referred the case to me.

My investigation showed that following the Department's initiation of the application process, it received a letter from the widow recommending that the lease be given to a certain individual. I was satisfied, at the end of my investigation, that the Department wrongly considered this as a request for an extension of the current lease, and an application for the Ministerial approval required for the lease to be assigned to the other person. I therefore concluded that the complaint submitted by the complainants was justified.

The question of what action was to be taken was somewhat more difficult. I did not feel that I could recommend that the lease immediately be given to the complainants. The man who had accepted the assignment, and was currently using the land, had no reason to doubt the Department's authority to approve the assignment. In addition, I had no evidence that the complainants would have been the successful applicants had the land not been withdrawn.

Accordingly, I advised the Deputy Minister of Renewable Resources that I felt that at the end of the current lease period in 1984, the Department should invite applications

from anyone who was interested in using the land. I said that I felt all applicants should be considered equally, and that no preference should be given to the man who is currently using the land.

Although the Deputy Minister raised some interesting legal arguments, he agreed with my proposal and my investigation was concluded.

82-2600-1 **Unsupported - No Assistance Possible**

A contractor successfully submitted a tender on a contract to clear land for the Department in Northern Alberta. As required, he submitted, with his bid, a deposit equal to 10 per cent of the contract value. For a variety of reasons, the contractor was unable to fulfil the contract and consequently forfeited his deposit, a standard condition of all contracts of this type.

He approached my office with a request to have at least a portion of his deposit returned to him. He argued that the Department had provided him with misleading information as to the type of land to be cleared.

My investigation led me to conclude that the Department had provided full information to all applicants and that the complainant's problems were primarily of his own making. He had hired inexperienced operators, and provided inadequate supervision. In addition, he used older equipment which was subject to frequent breakdown.

Other contractors in the area had all been able to fulfil their contracts within the required time limit. I also learned that the Department had agreed to extend the completion date for the complainant, but he was still unable to do what he had contracted to do.

I felt the Department had been lenient in its dealings with the complainant and I could not support the complaint.

DEPARTMENT OF THE ENVIRONMENT

82-2400-1 **Justified - Rectified**

A long-standing complaint was brought to my office by a rural family which had been bothered by the actions of a neighbour. This neighbour had diverted the flow of a stream running through his property and that of my complainants, preventing any water from flowing into a pond on my complainants' land.

The problem began in 1977 when the neighbour installed two culverts to prevent flooding of a private access road leading to his residence. When the complainants realized that the small stream running across their property had been diverted, they complained to the Department of the Environment, which directed the culverts be blocked off.

It was only when I contacted the Department that its officials learned that this work had not been completed. The Department again ordered the work to be done and made a follow-up inspection to ensure it was.

82-2400-7 **Justified - Assistance Rendered**

My assistance was requested by a farmer in Northern Alberta who was experiencing a flooding problem as a result of an incompleted drainage project. Some years ago, the county, in conjunction with the Department, initiated a drainage improvement project to a creek flowing through the complainant's land. The original plan was to include

channel improvement on the portion of the creek flowing through the complainant's land, but the work had stopped at his property line and he felt he was being subjected to additional flooding. The county had offered to purchase his land, but the complainant did not want to sell; he simply wanted the problem corrected.

My investigation demonstrated that the project had been commenced in 1978 at a point upstream from the complainant's property. Once this portion of the project was completed, the Department and the county decided not to proceed further, because of the lack of gradient downstream and because the complainant's land had not been cultivated for some years. In addition, it was felt that beaver dams downstream, and not the channel improvement upstream, were the primary cause of flooding.

When I contacted the Department, its officials acknowledged the problem and advised me that they were prepared to institute a further cost-sharing program with the county to correct the problem. In addition, the county was instructed to continue with a beaver control program downstream to alleviate part of the problem.

DEPARTMENT OF HOSPITALS AND MEDICAL CARE

ALBERTA HEALTH CARE INSURANCE DIVISION

82-3202-35 **Justified - Rectified**

The complainant, a senior citizen, suffered a loss of vision in her left eye. Her doctor felt that surgery should not be attempted because of certain risks which were involved, but did order a change in the prescription of the senior citizen's bifocals. The new glasses were ordered, and the senior citizen applied for reimbursement under the Extended Health Care Benefits Program. Her application was denied because she had been reimbursed for glasses within the preceding three years. The regulations provide for this three-year limit, although this can be waived in cases where a change in prescription is as a result of surgery.

While the decision was in accordance with the regulations, I felt that the interpretation in this case constituted a decision which was unjust, oppressive or improperly discriminatory, particularly since it was a specialist who had ruled out surgery. Accordingly, I made a formal recommendation to the Minister of Hospitals and Medical Care that the senior citizen be reimbursed for the $61.30 which was involved. I am pleased to report that the Minister acted promptly to accept the recommendation and order that the payment be made.

82-3202-9 **Unsupported - No Assistance Possible**

The father of a young teenager complained that he had received only a 25 per cent reimbursement from the Alberta Health Care Insurance Division for the costs of a specialized operation which was performed in another province on his daughter. In pursuing his claim with the Division, he was told that out-of-province claims are paid at the same rate as a similar service in Alberta. He felt that since the operation was unique, and not available in Alberta, he should be reimbursed for the full cost.

My investigation revealed that the specific procedure used in this case was not listed in the Division's Schedule of Benefits. Since the Division has no authority to unilaterally create a new category, unlisted procedures are reimbursed at the rate established for the most similar procedure which is shown in the Schedule. While I was sympathetic to the complainant's position, I did not feel that I could fault the Division in any way.

DEPARTMENT OF HOUSING AND PUBLIC WORKS

ALBERTA HOME MORTGAGE CORPORATION

82-3002-4 **Unsupported - Assistance Rendered**

The complainant had applied to the Alberta Home Mortgage Corporation for a subsidized mortgage. He was told he did not qualify because of his income level. He suggested to me that the Corporation had used the wrong formula to determine his gross income and that had the proper formula been used, he would have qualified.

In answer to my request, the Corporation provided me with full details of the application and the discussions between its staff members and the complainant. I reviewed this material with the complainant, who told me he was satisfied that his "suspicions of having been a victim of a stacked bureaucracy were unfounded."

Nonetheless, it was my feeling, shared by senior officials of the Corporation, that the employees involved with the complainant's application could have prevented problems by taking more time to explain procedures. These senior officials assured me that the employees involved would be counselled and efforts would be made to prevent similar situations in the future.

DEPARTMENT OF LABOUR

EMPLOYMENT STANDARDS BRANCH

82-3400-17 **Justified - Rectified**

The complainant told me that she had filed a claim for unpaid wages with the Employment Standards Branch. When she learned that other employees had recovered the money due to them, and she had not, she contacted the Branch and was told that her claim was not on file and she could not, therefore, be compensated.

My investigation led me to conclude, on a balance of probabilities, the complainant had filed the claim as she alleged but that it had somehow gone missing.

When advised of my findings, the Deputy Minister of Labour directed that an ex gratia payment of $720 be made to the complainant. Should the government later be able to obtain further funds from the former employer, these funds can be applied against the ex gratia payment.

82-3400-15 **Unsupported - No Assistance Possible**

In this case, the complainant felt that a delay by officials of the Employment Standards Branch had resulted in his losing any chance to recover wages which were due to him.

The complainant filed his claim with the Branch in late January and slightly more than a week later, advised the investigating Employment Standards Officer that a third party owed money to the employer. On the same day, the officer contacted the employer and was assured that all outstanding wages would be paid within a few days. When, a week later, the wages had not been paid, the Employment Standards Officer prepared and issued a demand on the third party, requiring that all money due to the employer be paid, instead, to the Employment Standards Branch. The third party replied to the Branch stating that the employer's company had gone into receivership and that he had been notified that the money which the Employment Standards Branch was attempting to collect had to be paid to the appointed receiver.

I concluded that officials of the Employment Standards Branch had not unreasonably delayed action on the file and that while the situation was regrettable, I could not fault

the Branch. However, I did bring to the attention of the Department of Labour certain shortcomings in the Employment Standards Act which, if corrected, could help prevent or resolve future problems with this type of case.

DEPARTMENT OF MUNICIPAL AFFAIRS

82-3600-4 **Unsupported - No Assistance Possible**

A local farmer made an application to subdivide his farm so as to provide two residential parcels of land for family members. The application was denied. The citizen used the established appeal procedure and presented his case to the Minister. His application was again refused. When he continued corresponding with the Department, the Minister advised him that he could approach my office if he felt he had been dealt with unfairly. The citizen did this.

My investigation revealed that the county had recommended approval of the subdivision application. However, the Department, in denying the application, referred to the subdivision regulation restricting residential subdivision within two miles of a nearby town. The county again made representations for conditional approval of the subdivision and again, the application was refused. In addition to the regulation, the Department noted that the proposal would fragment good agricultural land.

The complainant met with senior officials of the Department of Municipal Affairs and was given an opportunity to submit a revised application which better conformed with municipal and provincial standards. The complainant declined this offer, still arguing that the original application should be approved.

I could find no fault in the way the application was handled by the Department and therefore advised the complainant that I was unable to support him.

DEPARTMENT OF THE SOLICITOR GENERAL

82-4600-10 **Unsupported - No Assistance Possible**

A former employee of the Department wrote to me complaining that he had been wrongly dismissed from his position as a correctional officer at the Edmonton Remand Centre. He had unsuccessfully appealed the decision, and now turned to me for assistance.

My investigation revealed that the dismissal was based on an allegation that the complainant had used excessive force in dealing with an inmate. After a thorough investigation, I concluded that there was more than sufficient evidence to support the allegation, and advised the complainant that the Department's decision was justified.

At the same time, I advised the Department that while I concurred with its findings, I had some concerns about the thoroughness of its internal investigation. The Department agreed with this finding.

ALBERTA LIQUOR CONTROL BOARD

82-4601-8 **Justified - Rectified**

A businessman in Calgary wrote to me suggesting that certain regulations of the Alberta Liquor Control Board were improperly discriminatory.

The businessman had been exploring the possibility of opening a licensed restaurant in

Calgary, but had been advised that he was not eligible to be licensed in his own name because he was not a Canadian citizen. He could, however, incorporate a company which could then ask for a licence. A majority of the directors of such a company would have to be Canadian citizens and, according to the regulation, the person in charge of the restaurant at any given time would have to be a Canadian citizen.

I asked the Board to explain the reason for the citizenship requirement. The Chairman explained to me that the regulation dated back to 1958 at a time when there were major concerns that there would be an influx of American conglomerates attempting to take over the food and beverage business in Alberta. The Chairman also said that the Board was concerned that new licensees be familiar with the laws of Alberta and proper business procedure. He said these represented problems for many new licensees, but that the problem was compounded when dealing with non-Canadians.

I was not satisfied that either reason justified the citizenship requirement. I advised the Solicitor General, who is responsible for the Alberta Liquor Control Board, that I thought the government could develop regulations which would affect foreign-owned corporations without affecting individuals such as the complainant. On the question of knowledge of laws, I indicated to the Solicitor General that I saw little difference from a person who was applying for a driving licence. Such a person had to be aware of the laws of the road, but did not have to be a Canadian citizen.

The Minister advised me that he has asked the Board to consider the matter further, with a view to determining if the citizenship requirement should be removed from the regulation. In the meantime, the complainant did incorporate a company, and a liquor licence was issued.

I will continue to discuss this matter with the Solicitor General in the coming months.

82-4601-10 **Unsupported - No Assistance Possible**

This case posed a difficult situation for an employee of the Alberta Liquor Control Board and for me.

Officials of the Board were investigating a suspected internal theft. When the complainant, a casual employee, was questioned, he was asked whether he would report an internal theft to the Board if he witnessed it. He answered that he did not think that he would. This led to the complainant's dismissal on the grounds that he was not reliable.

My investigation satisfied me that the complainant had attempted to honestly answer a difficult question. I was also impressed with the fact that the young man had been considered as a good employee of the Board.

At the same time, I had to recognize that the Board has a very real interest in ensuring that its employees report incidents of theft which they witness.

Although I was sympathetic to the complainant's plight, I concluded that the Board's interest, in this case, was paramount, and that I could not support the complaint.

82-4601-2 **Justified - Rectified**
82-4601-14 **Unsupported - No Assistance Possible**

These two complaints came from casual employees of the Alberta Liquor Control Board who had been fired.

One evening, several employees, including one of the complainants, were seen consuming liquor after the store had closed. Not surprisingly, the management staff at the

store were very disturbed, and the following day reiterated Board policy to other employees of the store. The second complainant thought there was "much ado about nothing" and that evening, he and others pretended to be taking a drink from an unopened bottle.

Both of the complainants were dismissed. A permanent staff member, who had been involved in the first evening's incident, was suspended for one day.

I had no difficulty in concluding that I would not support the complaint of the casual employee who had actually taken a drink. This violation of an important Board policy provided the Board with more than enough evidence, in my view, to justify her dismissal.

The other case required more consideration. The complainant, although his actions were immature, did not actually take a drink. When I compared his dismissal to the one-day suspension imposed on the permanent employee who had consumed liquor in the store, I wondered if the dismissal was not excessive.

The Board told me that it had other concerns about the performance of the complainant, but was unable to produce any documentation that these problems had ever been brought to the complainant's attention. The complainant denied the allegations of the Board.

The complainant told me that he was not interested in returning to the Board's employ, but simply did not want a dismissal shown on his record. Under these circumstances, the Board agreed with my suggestion that the complainant be allowed to submit his resignation, and that references to his dismissal be removed from his personnel file.

I also raised with the Board my concern that there was no procedure in place to periodically assess the performance of casual employees. Although the Board indicated that such a process would be time-consuming, it agreed with my proposals and has now instituted a performance appraisal system for these employees.

CORRECTIONAL SERVICES DIVISION

81-4603-177 **Partially Justified - Partially Rectified**

This case, which resulted in a major investigation into complaints about the Calgary Detention Centre and the Calgary Remand Centre, was reported in the last annual report. At that time, I stated that the file would be kept open in order to review the efforts being made to reduce overcrowding at the Detention Centre.

This overcrowding has not been a major problem during 1982, partially because of a lower rate of admissions to the Detention Centre and partially because of new bed spaces being opened in the Calgary area, most notably through the opening of the Bow River Correctional Centre. While 1982 has been a relatively good year for the Detention Centre, officials of the Solicitor General's Department are fully aware of the need to continue to plan for the future.

82-4603-103 **Unsupported - No Assistance Possible**

82-4603-186 **Unsupported - No Assistance Possible**

In the annual report for 1981, I discussed my concerns about the housing of inmates who display psychiatric problems. This continues to be a concern, and one which is shared by senior officials of the Department of the Solicitor General. However, not every case can lead to an ideal solution.

In both of these cases, inmates of correctional facilities complained that they should be housed in a psychiatric facility. My investigations revealed that both inmates did, in fact, suffer from problems which necessitated psychiatric treatment. However, my investigations also disclosed that there do not exist, within the province, programs to deal with the particular needs of these inmates.

Under these circumstances, a very heavy burden falls upon officials of the Correctional Services Division. I was satisfied that in both of these cases, this burden had been more than met. Considerable time had been spent with both of these inmates to help them to adjust to life in a correctional centre, and to help them work through some of their problems. These efforts included a variety of professional people, as well as continuing assistance from correctional officers and administrators. Upon their releases, it will be up to these inmates to work in a one-to-one situation with professionals in the mental health field.

82-4603-17 **Justified - Rectified**

This complainant was housed at the Calgary Detention Centre at a time when overcrowding was still being experienced. The footwear he had at the time of his admission had been taken from him because of security concerns, and no replacement footwear was immediately available.

My investigation indicated that during this time, the complainant had a cold, and that a directive from the medical staff at the Centre had been issued to ensure that some type of footwear was given to the complainant. This directive was not followed. The Director of the Centre apologized to the inmate and the problem was rectified.

To prevent a recurrence of this type of problem, the Director also appointed a staff member to act as a liaison between inmates in the Detention Centre and senior administrative officials. This move helped reduce the number of complaints received by this office from inmates at the Centre.

82-4603-44 **Partially Justified - Rectified**

Inmates of correctional centres sometimes complain that officers in the centres use excessive force in performing their duties. I regard such allegations as serious but often find that the force which has been used has resulted only from the actions of the inmate himself.

In this case, the inmate said that when he was being removed from his cell to be transferred to a disciplinary cell, he was physically abused. My investigation, which included interviews with other inmates as well as correctional officers, revealed that the inmate had become violent in attempting to resist the correctional officers. I was satisfied that under the circumstances, the force involved was not unreasonable.

The inmate had also complained of errors in his inmate account. This allegation was proven and corrective action was taken.

82-4603-153 **Justified - Rectified**

82-4603-292 **Unsupported - No Assistance Possible**

These two complaints raised questions as to the degree of proof which is necessary before an inmate is convicted of a disciplinary offence within a correctional facility.

In both cases, the complainants were charged with being under the influence of an unknown substance. In one case, the inmate was observed by several staff members

showing signs of some form of intoxication. A medical report was inconclusive, but indicated there was a possibility that the inmate was under the influence of some substance. In the other case, only one staff member had observed the inmate showing some disturbing signs. However, a medical report stated positively that the inmate was not under the influence of any substance.

Both inmates appeared before disciplinary boards and were convicted. They were sentenced to 14 days in disciplinary cells. The sentences were later reduced to seven days by the Director of the Centre.

In the case where several staff members had made observations of the inmate, I felt that there was sufficient evidence, even in view of the uncertain medical report, that could reasonably lead a disciplinary panel to enter a conviction. However, in the other case, I felt there was not sufficient evidence, particularly since the medical staff involved had been so certain that the inmate was not under the influence of any substance. In this latter case, I advised the Department of my findings and the Department agreed to remove all references to the conviction from the records of the inmate, and to reimburse her for incentive pay which was lost while she was serving the disciplinary penalty.

82-4603-104 **Justified - Rectified**

Correctional centres in the province often use commercially-available devices to test various substances to determine if they contain alcohol or narcotics. In this case, an inmate questioned the accuracy of one of these tests.

The inmate had been charged with being under the influence of an unknown substance and had lost 30 days of earned remission. He denied that he had been in possession of any prohibited substance, although the test which had been conducted showed evidence that a narcotic was involved.

As a result of my investigation, the Director of the Peace River Correctional Centre undertook a review of the testing procedures, and contacted the manufacturer of the test. He concluded that the testing procedures which had been used were incorrect, thus leaving some doubt as to the reliability of the test.

The Director reinstated the lost remission and reviewed all previous similar convictions to determine whether they needed to be reconsidered. No such cases were found.

82-4603-5 **Justified - Rectified**

When this complainant was held at the Calgary Remand Centre in 1980, he alleged that some of his personal property had disappeared. An internal investigation was conducted which led the Department of the Solicitor General to agree, in July, 1981, to pay the complainant $1,000. He was told that it would take about three months to process the cheque. In January, 1982, the complainant still had not received the reimbursement and wrote to my office.

The Department told me it had experienced some difficulties in processing the payment and assured me that the claim would be finalized by early March. At the end of March, the complainant again wrote to me, saying he was still without the cheque. I again began to investigate the reasons for the delay and discovered that the Department's first application had been rejected by the computer, but that officials of the Solicitor General's Department had not been notified.

The payment process was initiated anew and a cheque issued within about a month, and I concluded that no useful purpose would be met by expanding my investigation

to delve further into the reasons for the delay. It is interesting to note that no similar complaints were received during the balance of 1982.

82-4603-53 **Discontinued 14 (1) (b) - Assistance Rendered**

A federal inmate complained to me about the arrangements made when he was sent to Calgary for a court hearing. The inmate, who was classified as protective custody because of the nature of the charges against him, complained that when he arrived at the Calgary Remand Centre, he was housed with others who were not protective custody inmates. He felt that this was a dangerous situation.

My investigation was unable to confirm the allegations. No records were kept by the Centre of which inmates were housed together. The Director of the Centre thought the possibility of the allegation being correct was minimal, although he conceded it was not impossible. In an attempt to reduce the possibility even further, he again cautioned his staff members on this sensitive issue.

The complainant had also raised a complaint against the federal correctional facility in which he was being held, and the Royal Canadian Mounted Police, who were responsible for bringing him to Calgary. The inmate said the correctional authorities did not tell the police of the inmate's protective custody status. Since this matter was outside my jurisdiction, I referred it to the federal Correctional Investigator. He was able to confirm this allegation and his discussions with the correctional facility authorities led to a change in practice.

82-4603-95 **Partially Justified - Partially Rectified**

This complainant came to see me after his release from the Fort Saskatchewan Correctional Centre and raised several complaints. While all of the complaints were investigated and indicated some degree of merit, one particular aspect deserves to be mentioned here.

As part of his pre-release program, the inmate was transferred to the Belmont Correctional Centre. One day, correctional officers approached him, placed him in restraints and took him to the Edmonton Remand Centre. Only after his arrival at the Centre was he told that the transfer resulted from his being required to attend court as a witness.

I raised questions with the Department of the Solicitor General as to whether this procedure was necessary and in the best interests of inmates and staff members. The Deputy Minister agreed that a change in procedure was warranted and I was more than satisfied with the actions taken to prevent a recurrence.

82-4603-207 **Justified - Rectified**

An inmate at the Calgary Remand Centre said that the institution was going to hold her beyond the date on which she believed her sentence expired. Since the complaint arrived on my desk only two days before the inmate believed she should be released, I ordered one of my assistants to treat the matter urgently.

My investigation disclosed that the committal warrant on which the inmate was being held contained some confusing wording. In addition, the Remand Centre had received inaccurate information as to how long the inmate had already been held in custody before she was delivered to the Remand Centre.

As a result of this information, the inmate was proven correct, and she was released from custody on the date she had always insisted was correct.

MOTOR VEHICLES DIVISION

82-4600-3 **Justified - Rectified**

A change in legislation, effective December 2, 1981, decreed that the Motor Vehicle Accident Claims Fund would not pay claims which were less than $200.

The complainant in this case had contacted officials of the Fund in late November, 1981 to register a claim. Application forms were sent to him and were then returned to the Fund. The complainant was then advised that his application had been rejected because of the new legislation. This was the first he had heard of the amendment.

When I asked the Department of the Solicitor General for its comments, I received an immediate response indicating that a policy decision had been made so that people such as my complainant could be paid for their claims which had been brought to the attention of the Fund prior to the legislative change.

82-1400-42 **Unsupported - No Assistance Possible**

This complainant wrote to me to say that he had incurred legal expenses in order to correct mistaken information which had been recorded by the Motor Vehicles Branch.

The complainant was arrested in 1979 for two drinking and driving offences. At the time of his arrest, he was also informed that he still owed $300 from a fine imposed in 1978 for a similar offence. The complainant denied that he had been convicted in 1978, but was forced to pay the $300 before he could be released from custody. Ultimately, it was determined that the complainant was correct, and that the outstanding fine had been imposed upon a person with a similar name and the same date of birth. The fine was refunded.

In 1980, the complainant was convicted on one of the charges stemming from the 1979 incident. As is practice, the Motor Vehicles Branch notified the complainant that his driving privileges were suspended as a result of the conviction. However, because the Motor Vehicles Branch still recorded the erroneous information on its computer, the notice of suspension said that the complainant could not drive for 36 months. The proper length of suspension was 12 months.

The complainant had a lawyer contact the Department and arrange for correction of the records and, as a result, was billed $475. When the Department refused to reimburse him, he wrote to me.

While I recognized that it was an error by government which had led to the bill, I was not satisfied that the complainant had, before hiring the lawyer, taken concrete steps on his own to try to resolve the matter. Had he done so, and been unsuccessful, I think his case would have been much stronger.

Under the circumstances, I concluded that I could not support his complaint.

DEPARTMENT OF SOCIAL SERVICES AND COMMUNITY HEALTH

82-4400-162 **Partially Justified - Rectified**

There are few situations more painful for everyone involved than a matter involving the custody of a child.

In this case, the complainants were the grandparents of children who had been apprehended by officials of the Department. At one stage between the time of the apprehension and the hearing on the application for wardship, the children lived with

their grandparents. They were subsequently removed from the grandparents' home and placed in another foster home.

At the hearing, the presiding judge said that he thought the children were best placed with the grandparents but that, for legal reasons, he could not immediately issue that order. He therefore adjourned the hearing for a time to allow the lawyer for the grandparents to take certain other steps. The grandparents complained to me that after hearing the remark from the judge, the Department should have immediately returned the children. Instead, the Department said it would return the children only if the grandparents complied with certain conditions, most of which related to the question of treatment for the natural mother of the children.

As a result of my investigation, I was satisfied that some of these conditions were unreasonable and could not be complied with by the grandparents. However, I also recognized that the Child Welfare authorities had legitimate reasons to be concerned about the welfare of the children and that the decision to move the children to another foster home could be justified.

Recognizing that the matter was to be returned to court within a very short time, I concluded that I could not recommend the children be returned to the grandparents. I did, however, advise the Deputy Minister of Social Services and Community Health of my concern as to the conditions which the Department had set out.

In his reply, the Deputy Minister assured me that officials would be very sensitive to future situations of this kind and that any proposed conditions would be reviewed by a supervisor within the Department.

82-4400-184 **Discontinued 14 (1) (a) - Assistance Rendered**

The complainant in this case was trying to obtain a delayed registration of her birth. She encountered a number of problems and finally turned to my office for help.

My inquiries revealed that the complainant had provided certain information to the Director of Vital Statistics, but that it did not conclusively prove the date of her birth. With the help of the Director, and the Department of Education, I was able to point the complainant in a new direction which would, hopefully, provide the needed proof. She was invited to contact my office again if her problem was not resolved, and since I have not heard from her, I assume that the help I was able to provide was sufficient.

82-4400-197 **Unsupported - No Assistance Possible**

The complainant felt that he had been treated unfairly during examinations for a dental technician's licence because there was insufficient time to complete the required procedure.

I discussed the matter with the Dental Technicians Board and the Registrar of the Health Occupations Board, and was satisfied that the policy employed by the Dental Technicians Board was reasonable, and had been explained to my complainant before he took the examination. Accordingly, I advised the complainant that I could not support him in this case.

82-4400-226 **Unsupported - No Assistance Possible**

82-4400-250 **Unsupported - No Assistance Possible**

These two complaints came from persons who had received bursaries to undertake a psychiatric nursing course at Alberta Hospital, Edmonton. They alleged that they were

doubly punished if they missed classes or clinical experience, in that money was deducted from their bursary and they were required to make up the lost time.

My investigation revealed that both of these students, as well as all other students, were given copies of a handbook which set out their obligations. The bursary which is provided covers those months — September to May — during which lectures and other classroom exercises are provided. The handbook sets out that if students miss more than 10 days of this part of the course, they must make this time up.

However, as part of the contract, the hospital agrees to employ the students during the summer months, so that they receive clinical experience. During this time, the students become wage employees of the government and, as such, are not entitled to be paid for days missed due to illness.

I concluded that the procedures and regulations were fair and I advised both complainants that I could not support their position.

DEPARTMENT OF TOURISM AND SMALL BUSINESS

ALBERTA OPPORTUNITY COMPANY

82-1802-2 **Unsupported - No Assistance Possible**

A citizen complained that he had to wait several months for funds after his loan had been approved by the Alberta Opportunity Company. This delay, the complainant said, resulted in his suffering a financial hardship.

My investigation revealed that this was a complicated loan application involving several parties. As one of its security requirements, the Alberta Opportunity Company had requested that the complainant provide a mortgage of his interest in certain premises, as well as a copy of the lease. The lease was provided, but it did not show the complainant as a person who had an interest in the premises. Obviously, therefore, the complainant was not in a position to give a mortgage.

I concluded that the delay in this case was as a result of the complainant not being able to provide the security which the Alberta Opportunity Company properly demanded before it advanced any funds.

DEPARTMENT OF TRANSPORTATION

82-4800-5 **Justified - Rectified**

A former temporary employee of the Department wrote to me saying that although he had left his job some nine months earlier, he had still not received his Record of Employment slip.

My initial contact with the Department elicited an explanation that the complainant had moved, and the Department did not have his new address. Although the complainant disputed this explanation, the slip was sent to him.

At about the same time, I began dealing with another similar file in which an ex-employee had not received the separation document.

Officials of the Department said that in reviewing the two cases, they had discovered a variety of poor administrative procedures. As a result, the responsible section of the Department was re-organized and required to comply with new procedures, designed to prevent future delays of this type.

TREASURY

82-3800-10 **Unsupported - No Assistance Possible**

A retired municipal employee complained to me about the way Alberta Treasury made out his pension cheques. He said that at the time of his retirement, he was told that because of the pension option he had elected, cheques would be made payable jointly to him and to his wife. He wrote that this had happened until mid-1981, when cheques began arriving payable only to him.

My investigation confirmed that prior to August, 1981, people such as the complainant would receive cheques made payable jointly to them and to another person of their choice. This was done primarily for the convenience of the pensioner.

However, as a result of a challenge in 1981, Alberta Treasury obtained a legal opinion that it was improper for the cheque to be made payable to anyone other than the pensioner and that the practice of jointly-payable cheques should be discontinued.

I advised the complainant that the Department had, in my view, acted properly and that I could not support his complaint.

DEPARTMENT OF UTILITIES AND TELEPHONES

82-4200-1 **Unsupported - No Assistance Possible**

The complainant, who was a member of an Alberta natural gas co-operative association, was critical of advice allegedly given by officials of the Department of Utilities and Telephones to the gas co-operative. At the time the complaint was made, the co-operative was about to go into receivership, and the complainant felt that the Department was responsible for the impending downfall.

A lengthy investigation into this complaint revealed that the gas co-operative did not adhere to the conditions of construction agreed upon by the co-operative and the Department, and also did not comply with the procedures outlined in the Rural Gas Program policy manual, the Rural Gas Act and the regulations under that Act.

The co-operative experienced a 57 per cent overrun on construction costs in 1980, a time when, according to the information I received, the co-operative was experiencing some managerial difficulties. Departmental officials felt that the increase in construction costs was far too great to be acceptable for full capitalization.

The Honourable Larry Shaben, then the Minister of Utilities and Telephones, advised the complainant of the government's decision not to provide additional funds to the co-operative.

I informed the complainant that in my opinion, there was no evidence to suggest that the gas co-operative had been unfairly treated by the Department, or that the Department had to bear any responsibility for the state of affairs in which the co-operative found itself.

In answer to another part of his complaint, however, I was able to assure the complainant that a new private utility, if it purchased the assets of the co-operative, would have to obtain the complainants's consent before it laid any new or additional gas pipeline on his property.

ALBERTA GOVERNMENT TELEPHONES

82-4201-16 **Unsupported - No Assistance Possible**

The complainant had been watching an American talk show and heard a guest talk about difficulties he was having with his telephone company. The actor then revealed what he said was his telephone credit card number and invited viewers to use it. The complainant acted on this invitation and made some $600 worth of telephone calls. When the U.S. telephone company rejected the charges, Alberta Government Telephones, acting under its tariff provisions, demanded payment for the calls from the complainant, who felt this was unfair.

The complainant told me that Alberta Government Telephones should have advised him, when he quoted the credit card number, that the number was not valid. I learned that the equipment used by AGT simply checks the format of the credit card number and does not provide an automatic authorization. Since the format of the number was, in fact, correct, the equipment allowed the call to go through. It was only after the U.S. company refused the charges that Alberta Government Telephones, and other telephone companies throughout the U.S. and Canada, had to go back to thousands of customers and demand payment.

I could not agree that the complainant had been improperly treated by Alberta Government Telephones.

DEPARTMENT OF WORKERS' HEALTH, SAFETY AND COMPENSATION

82-3500-1 **Justified - Rectified**

The complainant in this case is a contractor who is based outside of Alberta. Because he has had a number of contracts within the province, it was necessary for him to have his equipment certified as acceptable by the Occupational Health and Safety Division of the Department. In connection with one piece of equipment, the complainant said that he had met with, telephoned and written to various inspectors, engineers and other personnel for three years, and still did not have the necessary certification.

My investigation substantiated the claims of the complainant, and led to the counselling of several employees of the Department who had allowed the non-approved equipment to be used, sent the complainant scurrying from one regional office to another regional office, or had failed to respond to the complainant's correspondence.

When the matter was brought to the attention of senior officials of the Department, the complainant was directed to make a number of minor modifications to his equipment. When he did so, he received the necessary certification.

WORKERS' COMPENSATION BOARD

82-3501-9 **Partially Justified - Partially Rectified**

This complaint represented one of the rare occasions on which an employer has complained to me about an action taken by the Workers' Compensation Board.

An employee of the complainant firm had made a claim as a result of what he said was a work-related injury. The claim was initially accepted. The employer appealed this decision, saying that the condition suffered by the employee was a result of a prior injury and was not employment related. This appeal was accepted by the Claims Services Review Committee and the employee's claim was ordered rejected. The employee then appealed to the Commissioners of the Workers' Compensation Board.

The Commissioners felt that there was some doubt as to the origin of the injury and gave the worker the benefit of the doubt by approving the claim.

My investigation revealed that when they considered the case, the Commissioners had not notified the employer and given it an opportunity to make representations. Such a requirement is included within the Workers' Compensation Act. When I brought this to the attention of the Board, the Commissioners held a new hearing, and allowed the employer to present its evidence. While the decision to accept the claim was maintained, the Commissioners allowed the employer to be relieved of the costs associated with the claim, due to new medical evidence it was able to supply.

81-3501-159 **Unsupported - No Assistance Possible**

The complainant's solicitor, located outside Alberta, wrote to say that the Workers' Compensation Board was refusing further compensation to the complainant, who had been injured in an industrial accident in 1979. The solicitor said that he was arranging to have his client examined by a physician outside of Alberta to prove the claim.

My investigation revealed that the complainant had received compensation for about two months in 1979 and, intermittently, through to June of 1981 at times when further medical examinations were arranged. I awaited the results of the new medical examination and, when they arrived, I found that they confirmed the Board's earlier decision that the complainant was suffering from a pre-existing degenerative condition which was not related to the accident.

I advised the complainant, and his solicitor, that I could not provide any assistance to him and that, in my opinion, the Board had acted properly.

82-3501-76 **Justified - Rectified**

The complainant in this case arrived in my office with a letter of complaint indicating he had been injured three weeks ago, was destitute and was in the process of being evicted from his home due to non-payment of rent. The complainant had submitted a claim to the Workers' Compensation Board, but had not yet been paid.

The investigation of this case was treated with a high degree of priority and, by noon of the following day, the Board had accepted the claim and issued the complainant with an advance cheque of $500 to assist him with his financial plight.

82-3501-82 **Unsupported - Assistance Rendered**

This complainant wrote to me saying that he had suffered an eye injury and that the Workers' Compensation Board had refused to accept his claim.

During my investigation, I learned that the complainant had suffered his injury in late 1981. He filed his claim and was eventually paid a total of three weeks' compensation. No further payments were made since no new medical reports had been received from the doctor treating the complainant.

After I contacted the Board, its officials were in touch with the complainant's doctor and, based on verbal information given by the doctor, authorized further payments to the complainant.

This case is typical of a number of complaints which I receive in which the Board is alleged to have acted improperly when, in fact, the problem stems from the failure of a claimant to ensure that his doctor sends up-to-date medical reports to the Board.

82-3501-6 **Unsupported - Assistance Rendered**

This complainant wrote to me that he had entered into a personal coverage agreement with the Workers' Compensation Board and, subsequently, had obtained identical coverage through his employer. The complainant felt that the Board was attempting to collect double coverage for him, and told me that he had been advised the Board was taking legal action to recover the premiums said to be due.

My investigation established that the complainant had not notified the Board when his personal coverage was no longer needed. Because the complainant did not respond to notices from the Board, legal action was commenced. Once the Board became aware of the double coverage, the legal action was discontinued and the necessary refunds were made.

The complainant was satisfied with the explanation that was provided by my office.

82-3501-44 **Partially Justified - Partially Rectified**

This complainant had injured his knee in 1978 and received intermittent compensation benefits until mid-1981. The complainant felt that he was still disabled and, accordingly, should be receiving further benefits.

While my investigation did not reveal any medical evidence that would support the claim of continued disability, I did discover several payments which had not been made, and a failure to pay certain benefit increases when they became due. As a result, the complainant received approximately $2,000 to which he was entitled.

82-3501-124 **Justified - Rectified**

In writing to me, the complainant said he had two problems with the Workers' Compensation Board. He stated that he had been awarded a pension approximately two months earlier, but had not received any funds. He also said he was experiencing difficulties with his Rehabilitation Counsellor.

As a result of my investigation, it was established that there had been an undue delay in processing the complainant's cheques. The Board agreed to deal with the matter on a priority basis, and issued an advance payment to assist the complainant. The Board's actions in assigning a Senior Rehabilitation Counsellor to the complainant led to what the complainant called a complete reversal of his relationship.

ALBERTA HUMAN RIGHTS COMMISSION
AND
SOUTHERN ALBERTA INSTITUTE OF TECHNOLOGY

82-1000-10 **Unsupported - No Assistance Possible**
82-3403-4 **Unsupported - No Assistance Possible**

The initial letter of complaint in this case involved two separate issues. The complainant stated that he had been denied employment by the Southern Alberta Institute of Technology because of his age. The second branch of the complaint suggested that the Alberta Human Rights Commission, when approached about the case, had failed to properly investigate the complaint.

Both aspects of this complaint were thoroughly investigated. My investigation satisfied me that the complainant had not been discriminated against because of age but, rather, was not the best-qualified applicant for the job in which he was interested. I also found that the investigation by the Human Rights Commission had been very thorough and I could find no merit in the complaint against the Commission.

GOVERNMENT OF THE PROVINCE OF ALBERTA

OMBUDSMAN ACT

CHAPTER 0-7
REVISED STATUTES
OF ALBERTA
1980

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OMBUDSMAN ACT

CHAPTER O-7

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

(a) "agency" means a Provincial agency as defined in section 1 of the *Financial Administration Act* but does not include

(i) the board of a university under the *Universities Act*,

(ii) the board of a public college under the *Colleges Act*,

(iii) the Governors of the Banff Centre for Continuing Education,

(iv) the board of management of a Provincial General Hospital under the *Provincial General Hospitals Act*,

(v) the Provincial Cancer Hospitals Board,

(vi) the University Hospitals Board under the *University of Alberta Hospitals Act*,

(vii) the Hospital Privileges Appeal Board, and

(viii) the board of a technical institute under the *Technical Institutes Act;*

(b) "department" means a department as defined in section 1 of the *Financial Administration Act;*

(c) "Minister" means a member of the Executive Council;

(d) "Select Standing Committee" means the Select Standing Committee of the Legislative Assembly on Legislative Offices.

RSA 1980 cO-7 s1, 1981 cT-3.1 s44

Appointment

2(1) There shall be appointed, as an officer of the Legislature, a commissioner for investigations to be called the Ombudsman.

(2) Subject to section 7, the Lieutenant Governor in Council shall

appoint the Ombudsman on the recommendation of the Legislative Assembly.

RSA 1980 cO-7 s2

Restriction as to holding other offices

3(1) The Ombudsman may not be a member of the Legislative Assembly and shall not hold any office of trust or profit, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office.

(2) The Ombudsman must be a Canadian citizen.

RSA 1980 cO-7 s3

Term of office

4 Unless his office sooner becomes vacant, a person appointed as Ombudsman holds office for 5 years

(a) from the date of his appointment under section 2, or

(b) from the date his appointment under section 7 is confirmed under that section,

and any person, if otherwise qualified, may be reappointed.

RSA 1980 cO-7 s4

Resignation

5 The Ombudsman may at any time resign his office by writing addressed to the Speaker of the Legislative Assembly or, if there is no Speaker or if the Speaker is absent from Alberta, to the Clerk of the Legislative Assembly.

RSA 1980 cO-7 s5

Suspension or removal from office

6(1) On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Ombudsman from his office for disability, neglect of duty, misconduct or bankruptcy.

(2) At any time the Legislature is not in session the Lieutenant Governor in Council, on the recommendation of the Select Standing Committee, may suspend the Ombudsman from office for disability, neglect of duty, misconduct or bankruptcy, but the suspension shall not continue in force beyond the end of the next ensuing session of the Legislature.

RSA 1980 cO-7 s6

Vacancy in office

7(1) If the Ombudsman dies, retires, resigns or is removed from office, the vacancy created shall be filled in accordance with this section.

(2) If a vacancy occurs while the Legislature is in session, but no recommendation is made by the Legislative Assembly before the close of that session, subsection (3) applies as if the vacancy had occurred while the Legislature was not in session.

(3) If a vacancy occurs while the Legislature is not in session, the Lieutenant Governor in Council, on the recommendation of the Select Standing Committee, may appoint an Ombudsman to fill the vacancy and unless his office sooner becomes vacant, the person so appointed holds office until his appointment is confirmed by the Legislative Assembly.

(4) If an appointment under subsection (3) is not confirmed within 30 days after the commencement of the next ensuing regular session, the appointment lapses and there shall be deemed to be another vacancy in the office of Ombudsman.

RSA 1970 c268 s7;1978 c29 s4

Salary

8(1) The Ombudsman shall be paid a salary at a rate set by the Select Standing Committee and the Select Standing Committee shall review that salary rate at least once a year.

(2) The Ombudsman shall receive similar benefits to those provided to Deputy Ministers.

RSA 1970 c268 s8;1972 c75 s2;1975(2) c29 s2;1976 c77 s2;1978 c29 s5

Oath of office

9(1) Before entering on his duties, the Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office and that he will not, except in accordance with section 19(2) or section 22(3) and (4), divulge any information received by him under this Act.

(2) The oath shall be administered by the Speaker of the Legislative Assembly or by the Clerk of the Legislative Assembly.

RSA 1970 c268 s9;1972 c75 s3

Office of the Ombudsman

10(1) There shall be a department of the public service of Alberta called the Office of the Ombudsman consisting of the Ombudsman and the employees appointed pursuant to the *Public Service Act* to assist the Ombudsman in the efficient carrying out of his functions under this Act.

(2) On the recommendation of the Ombudsman, the Select Standing Committee may, by resolution, direct that any regulation, order or directive made under the *Public Service Act* or the *Financial Administration Act* or any allocation, designation or other decision of the Public Service Commissioner under the *Public Service Act* be inapplicable to, or be varied in its operation in respect of, the Office of the Ombudsman.

(3) A direction made under subsection (2) in relation to a regulation, order or directive made under the *Financial Administration Act* operates notwithstanding that Act.

(4) Every person holding an office or appointment under the Ombudsman shall, before he begins to perform his duties under this Act, take an oath, to be administered by the Ombudsman, that he will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

RSA 1970 c268 s10;1977 c68 s93(31);1978 c29 s6

Functions and duties

11(1) It is the function and duty of the Ombudsman to investigate any decision or recommendation made, including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any department or agency,

or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment.

(2) The Ombudsman may make an investigation either on a complaint made to him by any person or of his own motion, and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission as mentioned in subsection (1).

(3) The powers and duties conferred on the Ombudsman by this Act may be exercised and performed notwithstanding any provision in any Act to the effect

(a) that any decision, recommendation, act or omission mentioned in subsection (1) is final,

(b) that no appeal lies in respect thereof, or

(c) that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.

(4) Without limiting subsection (1), any committee of the Legislative Assembly may at any time refer to the Ombudsman, for investigation and report by him, any petition that is before that committee for consideration or any matter to which the petition relates and, in that case, the Ombudsman shall,

(a) subject to any special directions of the committee, investigate the matter so referred to him so far as it is within his jurisdiction, and

(b) make any report to the committee that he thinks fit,

but nothing in section 14, 20 or 21 applies in respect of any investigation or report made under this subsection.

(5) Without limiting subsection (1), a Minister may at any time by order refer any matter to the Ombudsman for investigation and report by him and, in that case, the Ombudsman may

(a) subject to any special directions of the Minister, investigate the matter so referred to him so far as it is within his jurisdiction, and

(b) make any report to the Minister that he thinks fit,

but nothing in section 14, 20 or 21 applies in respect of any investigation or report made under this subsection.

(6) An order made by a Minister under subsection (5) shall be published forthwith in The Alberta Gazette.

RSA 1970 c268 s11;1978 c29 s7

Jurisdiction restricted

12(1) Nothing in this Act authorizes the Ombudsman to investigate

(a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act until after that right of appeal or objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired, or

(b) any decision, recommendation, act or omission of any person acting as a solicitor for the Crown or acting as counsel for the Crown in relation to any proceedings.

(2) If any question arises as to whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Court of Queen's Bench for a declaratory order determining the question.

RSA 1970 c268 s12;1978 c51 s29

Complaint to Ombudsman

13(1) Every complaint to the Ombudsman shall be made in writing.

(2) Notwithstanding any Act, when a letter written by

(a) any person in custody on a charge or after conviction of any offence, or

(b) a patient of

(i) a facility within the meaning of the *Mental Health Act*, or

(ii) a place established under section 3(1) of that Act,

is addressed to the Ombudsman, it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is a patient.

RSA 1970 c268 s13;1972 c118 s70;1978 c29 s8

Refusal to investigate

14(1) If in the course of the investigation of any complaint it appears to the Ombudsman

(a) that under the law or existing administrative practice there is an adequate remedy, other than the right to petition the Legislature, for the complainant, whether or not he has availed himself of it, or

(b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

he may in his discretion refuse to investigate the matter further.

(2) The Ombudsman may, in his discretion, refuse to investigate or cease to investigate any complaint

(a) if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Ombudsman, or

(b) if in his opinion,

(i) the subject matter of the complaint is trivial,

(ii) the complaint is frivolous or vexatious or is not made in good faith, or

(iii) the complainant has not a sufficient personal interest in the subject matter of the complaint.

(3) When the Ombudsman decides not to investigate or to cease to investigate a complaint, he shall inform the complainant of his decision and he may, if he thinks fit, state his reasons for his decision.

RSA 1970 c268 s14

Notice of investigation

15(1) Before investigating any matter under this Act, the Ombudsman shall inform the deputy minister of the department or the administrative head of the agency affected, as the case may be, of his intention to make the investigation.

(2) The Ombudsman may, in his discretion, at any time during or after an investigation consult any Minister who is concerned in the matter of the investigation.

(3) On the request of any Minister in relation to an investigation or in any case where an investigation relates to a recommendation made to a Minister, the Ombudsman shall consult that Minister after making the investigation and before forming a final opinion on any of the matters referred to in section 20(1) or (2).

(4) If, during or after an investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of any department or agency, he shall refer the matter to the deputy minister of the department or the administrative head of the agency, as the case may be.

RSA 1970 c268 s15

Conduct at investigation

16(1) Every investigation by the Ombudsman under this Act shall be conducted in private.

(2) The Ombudsman may hear or obtain information from any persons he thinks fit and he may make inquiries he thinks fit.

(3) Subject to section 27(3), it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman.

(4) Subject to this Act and any rules made under section 28, the Ombudsman may regulate his procedure in any manner he thinks fit.

RSA 1970 c268 s16;1972 c75 s4

Evidence at investigation

17(1) Subject to this section and section 18, the Ombudsman may require any person who, in his opinion, is able to give any information relating to any matter being investigated by him

(a) to furnish the information to him, and

(b) to produce any document, paper or thing that in his opinion relates to the matter being investigated and that may be in the possession or under the control of that person,

whether or not that person is an officer, employee or member of a department or agency and whether or not the document, paper or thing is in the custody or under the control of a department or agency.

(2) When the Ombudsman requires the production of a document, paper or thing under subsection (1), he may require it to be produced at a place designated by him and may require that it be left in his possession for the purposes of his investigation but, on the request of the deputy minister of the department or the administrative head of the agency, the Ombudsman shall return the document, paper or thing to the department or agency as quickly as possible, but not later than 48 hours after the receipt of the request, subject to his right to again require its production in accordance with this section.

(3) The Ombudsman may summon before him and examine on oath

(a) any person who is an officer or employee or member of any department or agency and who in the Ombudsman's opinion is able to give any information mentioned in subsection (1),

(b) any complainant, and

(c) any other person who in the Ombudsman's opinion is able to give any information mentioned in subsection (1),

and for that purpose may administer an oath.

(4) Subject to subsection (5), a person who is bound by an Act to maintain secrecy in relation to, or not to disclose, any matter is not required to

(a) supply any information to or answer any question put by the Ombudsman in relation to that matter, or

(b) produce to the Ombudsman any document, paper or thing relating to it,

if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(5) With the prior consent in writing of a complainant, any person to whom subsection (4) applies may be required by the Ombudsman to supply information or answer any question or produce any document, paper or thing relating only to the complainant, and it is the duty of the person to comply with the requirement.

(6) Every person has the same privileges in relation to the giving of information, the answering of questions and the production of documents, papers and things under this Act as witnesses have in any court.

(7) Except on the trial of a person for perjury, no statement made or answer given by that or any other person in the course of an inquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

(8) No person is liable to prosecution for an offence against any Act by reason of his compliance with any requirement of the Ombudsman under this section.

RSA 1970 c268 s17;1972 c75 s5

Disclosures restricted

18(1) When the Attorney General certifies that the giving of any information or the answering of any question or the production for any document, paper or thing might involve the disclosure of

(a) the deliberations of the Executive Council, or

(b) proceedings of the Executive Council or a committee of it relating to matters of a secret or confidential nature and would be injurious to the public interest,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the document, paper or thing to be produced, but shall report the giving of the certificate to the Legislature.

(2) Subject to subsection (1), the rule of law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question, on the ground that the disclosure of the document, paper or thing or the answering of the question would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Ombudsman.

(3) Nothing in this Act authorizes the Ombudsman to require any person to produce a pre-sentence report or to furnish any information contained in or relating to a pre-sentence report.

RSA 1970 c268 s18;1978 c29 s9

Maintenance of secrecy

19(1) The Ombudsman and every person holding an office or appointment under him shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.

(2) Notwithstanding subsection (1), the Ombudsman may disclose in any report made by him under this Act any matters that in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

RSA 1970 c268 s19

Procedure after investigation

20(1) This section applies when, after making an investigation under this Act, the Ombudsman is of the opinion that the decision, recommendation, act or omission that was the subject matter of the investigation

(a) appears to have been contrary to law,

(b) was unreasonable, unjust, oppressive or improperly discriminatory or was in accordance with a rule of law, a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory,

(c) was based wholly or partly on a mistake of law or fact, or

(d) was wrong.

(2) This section also applies when the Ombudsman is of the opinion

(a) that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised

(i) for an improper purpose,

(ii) on irrelevant grounds, or

(iii) on the taking into account of irrelevant considerations,

or

(b) that, in the case of a decision made in the exercise of a discretionary power, reasons should have been given for the decision.

(3) If, when this section applies, the Ombudsman is of the opinion

(a) that the matter should be referred to the appropriate authority for further consideration,

(b) that the omission should be rectified,

(c) that the decision should be cancelled or varied,

(d) that any practice on which the decision, recommendation, act or omission was based should be altered,

(e) that any law on which the decision, recommendation, act or omission was based should be reconsidered,

(f) that reasons should have been given for the decision, or

(g) that any other steps should be taken,

the Ombudsman shall report his opinion and his reasons for it to the appropriate Minister and to the department or agency concerned, and may make any recommendations he thinks fit and in that case he may request the department or agency to notify him within a specified time of the steps, if any, that it proposes to take to give effect to his recommendations.

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion after considering the comments, if any, made by or on behalf of the department or agency affected, may send a copy of the report and recommendations to the Lieutenant Governor in Council and may thereafter make any report to the Legislature on the matter that he thinks fit.

(5) The Ombudsman shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the department or agency concerned.

RSA 1970 c268 s20;1972 s75 s6

Results of investigation to complainant

21(1) If the Ombudsman makes a recommendation under section 20(3) and no action that seems to the Ombudsman to be adequate and appropriate is taken on the recommendation within a reasonable time, the Ombudsman shall inform the complainant of his recommendation and make whatever comments on the matter he thinks fit.

(2) The Ombudsman shall in any case inform the complainant, in the manner and at the time he thinks proper, of the result of the investigation.

RSA 1970 c268 s21

Other inquiries

22(1) No report or recommendation of the Ombudsman and no investigation or other proceeding under this Act leading to a report or recommendation of the Ombudsman shall be made the subject of

(a) an inquiry under the *Public Inquiries Act*, or

(b) an inquiry, investigation, review or hearing by any person or body pursuant to any other Act.

(2) Subsection (1) does not apply to an inquiry, investigation, review or hearing conducted by

(a) the Legislative Assembly,

(b) a committee of members of the Legislative Assembly appointed by a resolution of the Legislative Assembly,

(c) a commissioner under the *Public Inquiries Act*, if a resolution

of the Legislative Assembly authorized the Lieutenant Governor in Council to make an order for the inquiry under that Act, or

(d) any other person or body appointed by a resolution of the Legislative Assembly,

and any resolution made under clause (b), (c) or (d) shall prescribe the terms of reference of the inquiry, investigation, review or hearing.

(3) Notwithstanding section 19 or any oath taken under section 9 or 10 but subject to subsection (4),

(a) the Ombudsman or a former Ombudsman, or

(b) any person who holds or formerly held an office or appointment under the Ombudsman or a former Ombudsman,

is a compellable witness in any inquiry, investigation, review or hearing mentioned in subsection (2) in respect of matters that came to his knowledge in the course of the administration of this Act.

(4) The Ombudsman or any other person mentioned in subsection (3) who is a witness in any inquiry, investigation, review or hearing mentioned in subsection (2)

(a) shall not answer any question or be compelled to answer any question, and

(b) shall not produce or be compelled to produce any document, paper or thing,

when the Ombudsman or counsel on his behalf objects on the ground that the answer, document, paper or thing relates to matters of a secret and confidential nature.

(5) When a former Ombudsman or any person who holds or formerly held an office or appointment under the Ombudsman or a former Ombudsman is summoned as a witness in an inquiry, investigation, review or hearing mentioned in subsection (2), the person who summoned that witness shall forthwith give notice of that fact to the Ombudsman that is sufficient in the circumstances to enable him to appear and to make objections in respect of the witness's testimony pursuant to subsection (4).

1972 c75 s7

Proceedings not subject to review

23 No proceedings of the Ombudsman shall be held bad for want of form and, except on the ground of lack of jurisdiction, no proceedings or decision of the Ombudsman shall be challenged, reviewed, quashed or called in question in any court.

RSA 1970 c268 s22

Proceedings privileged

24(1) No proceedings lie against the Ombudsman or against any person holding an office or appointment under the Ombudsman for any thing he may do or report or say in the course of the exercise

or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith.

(2) Neither the Ombudsman nor any person holding an office or appointment under the Omdudsman shall be called on to give evidence in any court or in any proceedings of a judicial nature in respect of any thing coming to his knowledge in the exercise of his functions under this Act.

(3) Any thing said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

(4) For the purposes of the *Defamation Act* any report made by the Ombudsman under this Act shall be deemed to be privileged and a fair and accurate report on it in a newspaper or a broadcast shall be deemed to be privileged.

RSA 1970 c268 s23

Entry of premises

25(1) For the purposes of this Act, the Ombudsman may at any time enter on any premises occupied by any department or agency and inspect the premises and, subject to sections 17 and 18, carry out in those premises any investigation that is within his jurisdiction.

(2) Before entering on any premises pursuant to subsection (1), the Ombudsman shall notify the deputy minister of the department or, as the case may require, the administrative head of the agency that occupies the premises of his intention to do so.

RSA 1970 c268 s24

Delegation of powers

26(1) With the prior approval of the Select Standing Committee, the Ombudsman may, by writing under his hand, delegate to any person holding any office under him any of his powers under this Act, except this power of delegation and the power to make any report under this Act.

(2) A delegation may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) Every delegation is revocable at will and no delegation prevents the exercise of any power by the Ombudsman.

(4) A delegation may be made subject to any restrictions and conditions the Ombudsman thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(5) Until a delegation is revoked, it continues in force according to its tenor and, in the event of the Ombudsman by whom it was made ceasing to hold office, continues to have effect as if made by his successor.

(6) Any person purporting to exercise any power of the Ombudsman by virtue of such a delegation shall, when required to do so, produce evidence of his authority to exercise the power.

RSA 1970 c268 s25;1978 c29 s10

Annual report

27(1) The Ombudsman shall in each year make a report to the Legislature on the exercise of his functions under this Act.

(2) The Ombudsman may, from time to time, in the public interest or in the interests of any person or department or agency publish reports relating

(a) generally to the exercise of his functions under this Act, or

(b) to any particular case investigated by him,

whether or not the matters to be dealt with in any such report have been the subject of a report to the Legislature.

(3) The Ombudsman shall not, in a report made under this section, express any opinion or make any comment that is adverse to

(a) any department or any officer or employee of a department,

(b) any agency or any member or employee of an agency, or

(c) any other person or group of persons,

unless prior to making the report to the Legislature or publishing the report pursuant to subsection (2), as the case may be, the Ombudsman has given that department, agency, officer, member, employee, person or group of persons an opportunity to know the nature of the opinion or comment and to make representations to him in respect of it either personally or by counsel.

RSA 1970 c268 ss20, 26;1972 c75 s8

Rules for guidance

28 The Legislative Assembly may,

(a) of its own volition, or

(b) on the recommendation of the Select Standing Committee,

make rules for the guidance of the Ombudsman in the exercise of his functions and duties.

RSA 1970 c268 s27;1978 c29 s10

Storage of and access to files

29(1) The Ombudsman may place any file relating to a complaint made to or an investigation made by the Ombudsman in the Provincial Archives of Alberta at any time after 2 years have elapsed from the date on which the file was closed, if access to the public records in the area in which the files are placed is prohibited or restricted by regulations under section 7 of the *Department of Government Services Act*.

(2) After 6 years have elapsed from the date on which it is closed

(a) a file relating to a complaint for which the Ombudsman declined to accept jurisdiction may be destroyed, and

(b) any other file made by the Ombudsman relating to a complaint or investigation under this Act may, after it is microfilmed, be destroyed and the microfilm stored in the Provincial Archives.

(3) No person, other than the Ombudsman and the staff of the Office of the Ombudsman, shall have access to the information contained in a file or a microfilm of a file stored in the Provincial Archives under this section.

1978 c29 s11

Offences and penalties

30 Any person who,

(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act,

(b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act, or

(c) wilfully makes a false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act,

is guilty of an offence and is liable to a fine of not more than $1000 and in default of payment to imprisonment for a term not exceeding 3 months.

RSA 1970 c268 s28;1978 c29 s12

Other laws

31 The provisions of this Act are in addition to the provisions of any other Act or any rule of law under which

(a) any remedy or right of appeal or objection is provided for any person, or

(b) any procedure is provided for the inquiry into or investigation of any matter,

and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure.

RSA 1970 c268 s29

THE FINANCIAL ADMINISTRATION ACT

1. (c) "department" means

(i) a department of the public service of Alberta established by an Act of the Legislature,

(ii) a part of the public service of Alberta that is not part of a department referred to in subclause (i) and that is designated as a department by the Lieutenant Governor in Council for the purpose of this Act, or

(iii) any other part of the public service of Alberta,

but does not include

(iv) the officers and employees of the Legislative Assembly,

(v) the Auditor General and the staff of the Office of the Auditor General,

(vi) the Ombudsman and the staff of the Office of the Ombudsman, and

(vii) the Chief Electoral Officer and the staff of the Office of the Chief Electoral Officer;

(l) "Provincial agency" means a Provincial corporation or a Provincial Committee;

(m) "Provincial committee" means an unincorporated board, commission, council, or other body that is not a department or part of a department, all or a majority of whose members are appointed or designated, either by their personal names or by their names of office, by an Act of the Legislature or regulations under an Act of the Legislature, by an order of the Lieutenant Governor in Council or of a Minister of the Crown or by any combination thereof;

(n) "Provincial corporation" means

(i) a corporation that is incorporated by or under an Act of the Legislature, other than a local or private Act all or a majority of whose members or directors are appointed or designated, either by their personal names or by their names of office, by an Act of the Legislature or regulations under an Act of the Legislature, by an order of the Lieutenant Governor in Council or of a Minister of the Crown or by any combination thereof, or

(ii) a corporation all of whose issued voting shares of every class are owned by the Crown or held in trust for the Crown or are partly owned by the Crown and partly held in trust for the Crown,

but does not include a new town or a housing authority incorporated under section 39 of the Alberta Housing Act.